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GENERAL LAWS

—OF THE—

STATE OF COLORADO,

—COMPRISING—

THAT PORTION OF THE REVISED STATUTES
OF COLORADO, AND THE GENERAL ACTS OF THE SUBSE-
QUENT LEGISLATIVE ASSEMBLIES OF COLORADO TERRITORY FOR
THE YEARS 1870, 1872, 1874, AND 1876, STILL REMAINING IN FORCE, AND THE
GENERAL LAWS ENACTED AT THE FIRST SESSION OF THE
GENERAL ASSEMBLY OF THE STATE OF COLO-
RADO, CONVENED NOVEMBER 1, 1876,

— TOGETHER WITH THE —

DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF THE UNITED
STATES, AND THE AMENDMENTS THERETO, THE ENABLING ACT,
THE CONSTITUTION OF THE STATE OF COLORADO, AND
THE PROCLAMATION OF THE PRESIDENT OF
THE UNITED STATES DECLARING THE
ADMISSION OF THE STATE.

PUBLISHED BY AUTHORITY.

DENVER:
TRIBUNE STEAM PRINTING HOUSE,
1877.

Colo. 3

Entered according to Act of Congress, in the year 1877,
By WM. M. CLARK, *Secretary of State, for the use of the* STATE OF COLORADO,
In the Office of the Librarian of Congress, at Washington, D. C.

[EXTRACT.]

AN ACT

TO PROVIDE FOR THE PRINTING OF THE CONSTITUTION OF THE UNITED STATES THE DECLARATION OF INDEPENDENCE, THE ENABLING ACT, AND CONSTITUTION OF THE STATE, TOGETHER WITH ALL THE GENERAL LAWS OF THIS STATE, IN THE MOST CONVENIENT AND COMPACT FORM, TOGETHER WITH AN INDEX TO THE SAME.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. That the secretary of state, as soon as practicable after the adjournment of the general assembly, shall prepare or cause to be prepared and printed, all the general laws passed by the general assembly, all general laws now in force and not repealed by this general assembly, the same to be arranged in a concise and compact form, so as to have all the law upon each subject arranged together under the same title as far as practicable; and that the said laws shall be divided by appropriate titles, with the date of approval printed at the end of each act passed by the first general assembly of the state, omitting the signature of the president of the senate and speaker of the house of representatives; and where any law has been amended by striking out and substituting sections, or changing sections, the law shall be printed so it will read in its proper order as amended, and may be sectionized in regular order, without reference to the numbers of sections in the former print; and wherever the word "territory" or "territorial" occurring in the laws is made by the constitution, synonymous with the word "state" by intendment, the word "state" shall be printed instead of the word "territory" or "territorial;" and so of the word "probate" where the word "county" is made by the constitution to stand in its place: *Provided*, That the act entitled "an act providing a system of procedure in civil actions in the courts of justice of the state of Colorado," shall not be printed in a volume with the other laws, but shall be printed by itself in a separate volume with an appropriate index to the same.

SEC. 2. That the declaration of independence; the constitution of the United States, and amendments thereto; the enabling act, providing for the admission of Colorado into the Union as a state; and the constitution of the state of Colorado, including the ordinances of the convention which framed the constitution; together with the president's proclamation of August 1, 1876, proclaiming the admission of Colorado as a state into the Union, be, and the same shall be included and printed in the above order, with the laws provided for in section one of this act.

SEC. 3. That the said secretary shall cause to be made and printed therewith, a full and complete index to all of said laws and other matter provided for in section one of this act, by reference to pages and sections, together with marginal notes to each section, in brief, setting out the subject matter of the section.

* * * * * * * *

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NOTE.—In conformity with the provisions of sections one, two and three of the preceding act, I have prepared this volume of laws. Having authority to publish only laws of a general nature, all acts of the former legislative assemblies of the territory, having only local or special significance, as well as those of the first session of the general assembly of the state, of a like character, are omitted from this publication. In the preparation of this volume, a revision has not been attempted, any further than the provisions of the sections of the act before mentioned seemed to require; and I have endeavored to conform as strictly to those provisions as was practicable.

WM. M. CLARK,
Secretary of State.

STATE OF COLORADO, }
SECRETARY'S OFFICE, }

I, WILLIAM M. CLARK, secretary of state for the state of Colorado, do hereby certify that by virtue of the authority vested in me by an act of the first general assembly of the state of Colorado, convened November 1, 1876, entitled; "an act to provide for the printing of the constitution of the United States; the declaration of independence; the enabling act and constitution of the state, together with all the general laws of this state, in the most convenient and compact form, together with an index to the same," approved March 22, 1877, I have prepared and caused to be printed all the general laws passed by the first general assembly of the state of Colorado, and all general laws now in force and not repealed by said general assembly, together with the declaration of independence; the constitution of the United States and amendments thereto; the enabling act, and the constitution of Colorado, including the ordinances of the constitutional convention, and the proclamation of the president of the United States, August 1, 1876, declaring the admission of the state; and I further certify that I have carefully compared the printed volume of said laws with the original copy thereof, and that the same is correctly printed.

SEAL

In Testimony Whereof, I have hereunto subscribed my name, and affixed the great seal of the state of Colorado, at Denver, in said state, this fifteenth day of June, A. D. 1877.

WM. M. CLARK,
Secretary of State.

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ERRATA.

Section 34, page 96, third line, for "action" read "auction."
" 141, " 126, should be section "140."
" 209, " 150, second line, for "corporalion" read "corporation."
" 575, " 254, twenty-second line, for "fulful" read "fulfil."
" 1213, " 464, fourteenth line, for "duies" read "duties."
" 1885, " 651, second line, for "issued" read "issue."
" 2436, " 805, second line, for "regualar" read "regular."
" 2701, " 906, first line, for "incorpoated" read "incorporated."

The following sections, 42 and 43, of chapter XX, revised statutes, were accidentally omitted in the compilation. They should follow section 22, of chapter XXI, on page 202, of the general laws:

SEC. — . Whenever the legal voters of any county are desirous of changing their county seat, at any time, upon petition being presented to the county commissioners, signed by a majority of them, to be ascertained by said commissioners, it shall be the duty of such commissioners to require the sheriff in giving the notice for the next county election, to notify said voters to designate upon their ballots, at said election, the place of their choice; and if upon canvassing the votes polled or given, it shall appear that any one place has a majority of all the votes polled, such place shall be the county seat, and notice of such change shall be given, as provided in section twenty-two.

SEC. ——. If no place has a majority of all the votes polled in either of such elections for the location or change of the county seat, it shall be the duty of the county commissioners, within one month after any such election, to order a special election and give ten days' notice thereof, in each township in the county, at which election votes shall be taken by ballot, the same as at the general election, and if no place then have a majority of all the votes, the county seat shall not be changed until the next general election, when a vote may again be taken as provided in section twenty-two.

Section 31, of chapter LIII, page 533, general laws, being section 38, of chapter XLVIII, revised statutes, is directly repealed by act of February 9, 1872, and should have been omitted.

Sections 95 and 96, of chapter LV, page 570, general laws, being sections 97 and 98, of chapter L, revised statutes, are directly repealed by act of February 8, 1876, and should have been omitted.

Declaration of Independence.

IN CONGRESS, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect to the opinions of mankind, requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former

systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbid his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into a compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby, the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the State remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws of naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of land.

He has obstructed the administration of justice, by refusing his assent to laws, establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harrass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has effected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders, which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes upon us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond the seas to be tried for pretended offenses:

For abolishing the free system of English laws, in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever:

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We

have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind—enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be; totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

Constitution of the United States.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.

ARTICLE I.

SECTION I.

1. All legislative powers herein granted, shall be vested in a Congress of the Uuited States, which shall consist of a Senate and House of Representatives.

SECTION II.

1. The House of Representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as

they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative: and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECTION III.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years, and each Senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so the one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate; but shall have no vote unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation.

When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION IV.

1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State, by the legislature thereof, but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

1. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with a concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts, as may, in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to other place than that in which the two Houses shall be sitting.

SECTION VI.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treas-

ury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same, and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

SECTION VII.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House, in which it shall have originated, who shall enter the objections, at large, on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and, if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of persons voting for and against the bill, shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him shall be re-past by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The Congress shall have power:

1. To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

2. To borrow money on the credit of the United States.

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. To establish post offices and post roads.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

9. To constitute tribunals, inferior to the supreme court. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

12. To provide and maintain a navy.

13. To make rules for the government and regulation of the land and naval forces.

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

16. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of Congress, become the seat

of the government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings; and:

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for such person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder or ex-post facto law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SECTION X.

1. No State shall enter into any treaty, alliance or confederation; grant letters of marque or reprisal; coin money; emit bills of credit;

make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex-post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a major-

ity of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President, and if no person have a majority, then from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case after the choice of the President, the person having the greatest number of votes of the electors, shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be elligible to the office of President; neither shall any person be elligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive, within that period, any other emolument from the United States, or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my

ability, preserve, protect, and defend the Constitution of the United States."

SECTION II.

1. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECTION III.

1. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION IV.

1. The President and Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish.

The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.

1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States, and between a State or the citizens thereof and foreign States, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by a jury; and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION III.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies; giving them aid and comfort. No person shall be convicted of treason, unless on the

testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION I.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION II.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution

shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION IV.

1. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

1. The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses of the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby; anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several legislatures, and all executive and judicial

officers, both of the United States and of the several States shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

1. The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, By the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

In Witness Whereof, We have hereunto subscribed our names:

GEO. WASHINGTON, PRESIDENT, *and Deputy from Virginia.*

New Hampshire:
John Langdon,
Nicholas Gilman,
John Dickinson,
Richard Bassett,
Jacob Broom.

Connecticut:
Wm. Samuel Johnson,
Roger Sherman.

New York:
Alexander Hamilton.

New Jersey:
William Livingston,
David Brearley,
William Patterson,
Jonathan Dayton.

Pennsylvania:
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson
Gouverneur Morris.

Delaware:
Geo. Reed,
Gunning Bedford, Jr.

Massachusetts:
Nathaniel Gorham,
Rufus King.

Maryland:
James McHenry,
Daniel of St. Thomas Jenifer,
Daniel Caroll.

Virginia:
John Blair,
James Madison, Jr.

North Carolina:
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

South Carolina:
John Rutledge,
C. Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

Georgia:
William Few,
Abraham Baldwin.

ATTEST: WILLIAM JACKSON, *Secretary.*

Amendments to the Constitution.

ARTICLE I.

1. Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for the redress of grievances.

ARTICLE II.

1. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

1. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

1. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

1. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal

case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

1. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

ARTICLE VII.

1. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

1. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

1. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

1. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

1. The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

1. The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State as themselves; they shall name in their ballots the person voted for as President; and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally inelligible to the office of President, shall be elligible to that of Vice President of the United States.

ARTICLE XIII.

1. Neither slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted,

shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representatives therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume

or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims, shall be held illegal and void.

5. That Congress have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of race, color or previous condition of servitude.

2. Congress shall have power to enforce this article by appropriate legislation.

ENABLING ACT.

AN ACT

TO ENABLE THE PEOPLE OF COLORADO TO FORM A CONSTITUTION AND STATE GOVERNMENT, AND FOR THE ADMISSION OF THE SAID STATE INTO THE UNION, ON AN EQUAL FOOTING WITH THE ORIGINAL STATES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That the inhabitants of the territory of Colorado included in the boundaries hereinafter designated, be, and they are hereby authorized to form for themselves, out of said territory, a State government, with the name of the State of Colorado; which State, when formed, shall be admitted into the Union upon an equal footing with the original States in all respects whatsoever, as hereinafter provided.

SEC. 2. That the said State of Colorado shall consist of all the territory included within the following boundaries, to wit: commencing on the thirty-seventh parallel of north latitude where the twenty-fifth meridian of longitude west from Washington crosses the same; thence north, on said meridian, to the forty-first parallel of north latitude; thence along said parallel west to the thirty-second meridian of longitude west from Washington; thence south on said meridian, to the thirty-seventh parallel of north latitude; thence along said thirty-seventh parallel of north latitude, to the place of beginning.

SEC. 3. That all persons qualified by law to vote for representatives to the general assembly of said territory, at the date of the passage of this act, shall be qualified to be elected, and they are hereby authorized to vote for and choose representatives to form a convention, under such rules and regulations as the governor of said territory, the chief justice, and the United States attorney thereof may prescribe; and also to vote upon the acceptance or rejection of such constitution as may be formed by said convention, under such rules and regulations as said convention may prescribe; and

the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said territory in proportion to the vote polled in each of said counties at the last general election as near as may be; and said apportionment shall be made for said territory by the governor, United States district attorney, and chief justice thereof, or any two of them; and the governor of said territory shall, by proclamation, order an election of the representatives aforesaid, to be held throughout the territory at such time as shall be fixed by the governor, chief justice and United States attorney, or any two of them; which proclamation shall be issued within ninety days next after the first day of September, eighteen hundred and seventy-five, and at least thirty days prior to the time of said election; and such election shall be conducted in the same manner as is prescribed by the laws of said territory regulating elections therein, for members of the house of representatives; and the number of members to said convention shall be the same as now constitutes both branches of the legislature of the aforesaid territory.

SEC. 4. That the members of the convention thus elected shall meet at the capital of said territory, on a day to be fixed by said governor, chief justice, and United States attorney, not more than sixty days subsequent to the day of election, which time of meeting shall be contained in the aforesaid proclamation mentioned in the third section of this act, and after organization, shall declare, on behalf of the people of said territory, that they adopt the Constitution of the United States; whereupon the said convention shall be, and is hereby authorized, to form a Constitution and State government for said territory; *Provided*, That the Constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence; *And, Provided further*, That said convention shall provide by an ordinance irrevocable without the consent of the United States and the people of said State; *First*, That perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested in person or property, on account of his or her mode of religious worship; *Secondly*, That the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and

that the lands belonging to citizens of the United States residing without the said State, shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to, or which may hereafter be purchased by the United States.

SEC. 5. That in case the constitution and State government shall be formed for the people of said territory of Colorado, in compliance with the provisions of this act, said convention forming the same shall provide by ordinance, for submitting said constitution to the people of said State for their ratification or rejection, at an election, to be held at such time, in the month of July, eighteen hundred and seventy-six, and at such places and under such regulations as may be prescribed by said convention, at which election the lawful voters of said new State shall vote directly for or against the proposed constitution; and the returns of said election shall be made to the acting governor of the territory, who, with the chief justice and United States attorney of said territory, or any two of them, shall canvass the same; and if a majority of legal votes shall be cast for said constitution in said proposed State, the said acting governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinances, whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of congress.

SEC. 6. That until the next general census, said State shall be entitled to one representative in the house of representatives of the United States, which representative together with the governor and State and other officers provided for in said constitution, shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention; and until said State officers are elected and qualified under the provisions of the constitution, the territorial officers shall continue to discharge the duties of their respective offices.

SEC. 7. That sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of congress, other lands equivalent thereto in legal subdivisions of not more than one quarter-section, and as contiguous as may be, are, hereby granted to said State for the support of common schools.

SEC. 8 That, provided the State of Colorado shall be admitted into the Union in accordance with the foregoing provisions of this act, fifty entire sections of the unappropriated public lands within said State, to be selected and located by direction of the legislature thereof, and with the approval of the President, on or before the first day of January, eighteen hundred and seventy-eight, shall be and are hereby granted, in legal subdivisions of not less than one quarter-section, to said State for the purpose of erecting public buildings at the capital of said State, for legislative and judicial purposes, in such manner as the legislature shall prescribe.

SEC. 9. That fifty other entire sections of land as aforesaid, to be selected and located and with the approval as aforesaid, in legal subdivisions as aforesaid, shall be and they are hereby, granted to said State for the purpose of erecting a suitable building for a penitentiary or State prison in the manner aforesaid.

SEC. 10. That seventy-two other sections of land shall be set apart and reserved for the use and support of a State University, to be selected and approved in manner as aforesaid, and to be appropriated and applied as the legislature of said State may prescribe for the purpose named and for no other purpose.

SEC. 11. That all salt springs within said State not exceeding twelve in number, with six sections of land adjoining, and as contiguous as may be to each, shall be granted to said State for its use, the said land to be selected by the governor of said State within two years after the admission of the State, and when so selected to be used and disposed of on such terms, conditions and regulations as the legislature shall direct; *Provided*, That no salt spring or lands, the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals shall by this act be granted to said State.

SEC. 12. That five per centum of the proceeds of the sales of agricultural public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making such internal improvements within said State as the legislature thereof may direct; *Provided*, That this section shall not apply to any lands disposed of under the homestead laws of the United States, or to any lands now or hereafter reserved for public or other uses.

SEC. 13. That any balance of the appropriations for the legislative

expenses of said territory of Colorado remaining unexpended shall be applied to and used for defraying the expenses of said convention, and for the payment of the members thereof, under the same rules and regulations and rates as are now provided by law for the payment of the territorial legislature.

SEC. 14. That the two sections of land in each township herein granted for the support of common schools, shall be disposed of only at public sale and at a price not less than two dollars and fifty cents per acre, the proceeds to constitute a permanent school fund, the interest of which to be expended in the support of Common Schools.

SEC. 15. That all mineral lands shall be excepted from the operation and grants of this act.

Approved March 3, 1875.

Constitution of the State of Colorado,

Adopted in Convention, March 14, 1876.

PREAMBLE.

We, the people of Colorado, with profound reverence for the Supreme Ruler of the Universe, in order to form a more independent and perfect government; establish justice; insure tranquility; provide for the common defense; promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the "State of Colorado."

ARTICLE I.

BOUNDARIES.

The boundaries of the State of Colorado shall be as follows: Commencing on the thirty-seventh parallel of north latitude, where the twenty-fifth meridian of longitude west from Washington crosses the same; thence north on said meridian to the forty-first parallel of north latitude; thence along said parallel west to the thirty-second meridian of longitude west from Washington; thence south on said meridian to the thirty-seventh parallel of north latitude; thence along said thirty-seventh parallel of north latitude to the place of beginning.

ARTICLE II.

BILL OF RIGHTS.

In order to assert our rights, acknowledge our duties, and proclaim the principles upon which our government is founded, we declare:

SECTION 1. That all political power is vested in and derived from

the people; that all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

SEC. 2. That the people of this State have the sole and exclusive right of governing themselves, as a free, sovereign and independent State; and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States.

SEC. 3. That all persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.

SEC. 4. That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the good order, peace, or safety of the State. No person shall be required to attend or support any ministry or place of worship, religious sect, or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship.

SEC. 5. That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

SEC. 6. That courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; and that right and justice should be administered without sale, denial, or delay.

SEC. 7. That the people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures; and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation, reduced to writing.

SEC. 8. That, until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indict-

ment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information.

SEC. 9. That treason against the State can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason unless on the testimony of two witnesses to the same overt act, or on his confession in open court; that no person can be attainted of treason or felony by the general assembly; that no conviction can work corruption of blood or forfeiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death.

SEC. 10. That no law shall be passed impairing the freedom of speech; that every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.

SEC. 11. That no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly.

SEC. 12. That no person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases of tort or where there is a strong presumption of fraud.

SEC. 13. That the right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

SEC. 14. That private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes.

SEC. 15. That private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less

than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public, shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

SEC. 16. That in criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

SEC. 17. That no person shall be imprisoned for the purpose of securing his testimony in any case longer than may be necessary in order to take his deposition. If he can give security he shall be discharged; if he cannot give security, his deposition shall be taken by some judge of the supreme, district, or county court, at the earliest time he can attend, at some convenient place, by him appointed for that purpose, of which time and place the accused and the attorney prosecuting for the people, shall have reasonable notice. The accused shall have the right to appear in person and by counsel. If he have no counsel, the judge shall assign him one in that behalf only. On the completion of such examination the witness shall be discharged on his own recognizance, entered into before said judge, but such deposition shall not be used if, in the opinion of the court, the personal attendance of the witness might be procured by the prosecution, or is procured by the accused. No exception shall be taken to such deposition as to matters of form.

SEC. 18. That no person shall be compelled to testify against himself in a criminal case, nor shall any person be twice put in jeopardy for the same offense. If the jury disagree, or if the judgment be arrested after verdict or if the judgment be reversed for error in law, the accused shall not be deemed to have been in jeopardy.

SEC. 19. That all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

SEC. 20. That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

SEC. 21. That the privilege of the writ of *habeas corpus* shall never be suspended, unless when in case of rebellion or invasion, the public safety may require it.

SEC. 22. That the military shall always be in strict subordination to the civil power; that no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

SEC. 23. The right of trial by jury shall remain inviolate in criminal cases; but a jury in civil cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve men, as may be prescribed by law. Hereafter a grand jury shall consist of twelve men, any nine of whom concurring may find an indictment; *provided*, the general assembly may change, regulate or abolish the grand jury system.

SEC. 24. That the people have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance.

SEC. 25. That no person shall be deprived of life, liberty, or property, without due process of law.

SEC. 26. That there shall never be in this State either slavery or involuntary servitude, except as a punisment for crime, whereof the party shall have been duly convicted.

SEC. 27. Aliens, who are or who may hereafter become *bona fide* residents of this State, may acquire, inherit, possess, enjoy and dispose of property, real and personal, as native born citizens.

SEC. 28. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

ARTICLE III.

DISTRIBUTION OF POWERS.

The powers of the government of this State are divided into three distinct departments—the legislative, executive and judicial—and no person, or collection of persons, charged with the exercise of powers properly belonging to one of these departments, shall exercise any power properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SEC. 1. The executive department shall consist of a governor, lieutenant governor, secretary of State, auditor of State, State treasurer, attorney general, and superintendent of public instruction, each of whom shall hold his office for the term of two years, beginning on the second Tuesday of January next after his election; *Provided,* That the terms of office of those chosen at the first election held under this Constitution, shall begin on the day appointed for the first meeting of the general assembly. The officers of the executive department, except the lieutenant governor, shall, during their term of office, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this Constitution or by law.

SEC. 2. The supreme executive power of the State shall be vested in the governor, who shall take care that the laws be faithfully executed.

SEC. 3. The officers named in section one of this article, shall be chosen on the day of the general election, by the qualified electors of the State. The returns of every election for said officers shall be sealed up and transmitted to the secretary of State, directed to the speaker of the house of representatives, who shall immediately, upon the organization of the House, and before proceeding to other business, open and publish the same in the presence of a majority of the members of both houses of the general assembly, who shall for that purpose assemble in the house of representatives. The person having the highest number of votes for either of said offices shall be declared duly elected, but if two or more have an equal and the highest number of votes for the same office, one of them shall be chosen thereto by the two houses, on joint ballot. Contested elections for the said offices shall be determined by the two houses, on joint ballot, in such manner as may be prescribed by law.

SEC. 4. No person shall be elligible to the office of governor, lieutenant governor or superintendent of public instruction, unless he shall have attained the age of thirty years, nor to the office of auditor of State, secretary of state, or state treasurer, unless he shall have attained the age of twenty-five years, nor to the office of attorney general unless he shall have attained the age of twenty-five years, and

be a licensed attorney of the supreme court of the State, or of the territory of Colorado, in good standing. At the first election under this constitution, any person being a qualified elector at the time of the adoption of this constitution, and having the qualifications above herein prescribed for any one of said offices, shall be eligible thereto; but thereafter no person shall be eligible to any one of said offices, unless, in addition to the qualifications above prescribed therefor, he shall be a citizen of the United States, and have resided within the limits of the State two years next preceding his election.

SEC. 5. The governor shall be commander-in-chief of the military forces of the State, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, suppress insurrection, or repel invasion.

SEC. 6. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for, and may remove any such officer for incompetency, neglect of duty or malfeasance in office. If during the recess of the senate a vacancy occur in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of auditor of state, state treasurer, secretary of state, attorney general, or superintendent of public instruction, shall be vacated by death, resignation, or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law. The senate in deliberating upon executive nominations may sit with closed doors, but in acting upon nominations they shall sit with open doors, and the vote shall be taken by ayes and noes, which shall be entered upon the journal.

SEC. 7. The governor shall have power to grant reprieves, commutations and pardons after conviction, for all offenses except treason, and except in case of impeachment, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons, but he shall in every case where he may exercise this power, send to the general assembly, at its first session thereafter, a transcript of the petition, all proceedings, and the reasons for his action.

SEC. 8. The governor may require information in writing from the officers of the executive department upon any subject relating to

the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing at any time, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions. The governor shall, at the commencement of each session, and from time to time, by message, give to the general assembly information of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall also send to the general assembly a statement, with vouchers, of the expenditures of all moneys belonging to the State, and paid out by him. He shall, also, at the commencement of each session, present estimates of the amount of money required to be raised by taxation for all purposes of the State.

SEC. 9. The governor may, on extraordinary occasions, convene the general assembly, by proclamation, stating therein the purpose for which it is to assemble; but at such special session no business shall be transacted, other than that specially named in the proclamation. He may, by proclamation, convene the senate in extraordinary session for the transaction of executive business.

SEC. 10. The governor, in case of a disagreement between the two houses as to the time of adjournment, may, upon the same being certified to him by the house last moving adjournment, adjourn the general assembly to a day not later than the first day of the next regular session.

SEC. 11. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If then two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by ayes and noes, to be entered upon the journal. If any bill shall not be returned by the governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly shall, by

their adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the secretary of state, within thirty days after such adjournment, or else become a law.

SEC. 12. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void, unless enacted in manner following: If the general assembly be in session, he shall transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

LIEUTENANT GOVERNOR.

SEC. 13. In case of the death, impeachment, or conviction of felony or infamous misdemeanor, failure to qualify, resignation, absence from the State, or other disability of the governor, the powers, duties, and emoluments of the office, for the residue of the term, or until the disability be removed, shall devolve upon the lieutenant governor.

SEC. 14. The lieutenant governor shall be president of the senate, and shall vote only when the senate is equally divided. In case of the absence, impeachment, or disqualification from any cause of the lieutenant governor, or when he shall hold the office of governor, then the president *pro tempore* of the senate shall perform the duties of the lieutenant governor, until the vacancy is filled or the disability removed.

SEC. 15. In case of the failure to qualify in his office, death, resignation, absence from the State, impeachment, conviction of felony, or infamous misdemeanor, or disqualification from any cause, of both the governor and lieutenant governor, the duties of the governor shall devolve on the president of the senate *pro tempore*, until such disqualification of either the governor or lieutenant governor be removed, or the vacancy be filled; and if the president of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house.

SEC 16. An account shall be kept by the officers of the executive department and of all public institutions of the State, of all

moneys received by them severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath.

SEC. 17. The officers of the executive department, and of all public institutions of the State, shall at least twenty days preceding each regular session of the general assembly, make full and complete report of their actions to the governor, who shall transmit the same to the general assembly.

SEC. 18. There shall be a seal of the State, which shall be kept by the secretary of State, and shall be called the "Great Seal of the State of Colorado." The seal of the territory of Colorado, as now used, shall be the seal of the State until otherwise provided by law.

SEC. 19. The officers named in section one of this article, shall receive for their services a salary to be established by law, which shall not be increased or diminished during their official terms. It shall be the duty of all such officers to collect in advance all fees prescribed by law for services rendered by them severally, and pay the same into the State treasury.

SEC. 20. The superintendent of public instruction shall be, *ex officio*, state librarian.

SEC. 21. Neither the State treasurer nor State auditor shall be eligible for re-election as his own immediate successor.

ARTICLE V.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power shall be vested in the general assembly, which shall consist of a senate and house of representatives, both to be elected by the people.

SEC. 2. An election for members of the general assembly shall be held on the first Tuesday in October, in the years of our Lord 1876 and 1878, and in each alternate year thereafter, on such day, at such places in each county as now are or hereafter may be provided by law. The first election for members of the general assembly under the State organization shall be conducted in the manner prescribed by the laws of Colorado Territory regulating elections for members of the legislative assembly thereof. When vacancies occur

in either house, the governor, or person exercising the powers of governor, shall issue writs of election to fill such vacancies.

SEC. 3. Senators shall be elected for the term of four years except as hereinafter provided, and representatives for the term of two years.

SEC. 4. No person shall be a representative or senator who shall not have attained the age of twenty-five years, who shall not be a citizen of the United States, who shall not for at least twelve months next preceding his election have resided within the territory included in the limits of the county or district in which he shall be chosen; *provided*, that any person who at the time of the adoption of this Constitution was a qualified elector under the Territorial laws, shall be eligible to the first general assembly.

SEC. 5. The senators, at their first session, shall be divided into two classes. Those elected in districts designated by even numbers shall constitute one class; those elected in districts designated by odd numbers shall constitute the other class, except that senators elected in each of the districts having more than one senator shall be equally divided between the two classes. The senators of one class shall hold for two years; those of the other class shall hold for four years—to be decided by lot between the two classes, so that one-half of the senators, as near as practicable, may be biennially chosen forever thereafter.

SEC. 6. Each member of the first general assembly, as a compensation for his services, shall receive four dollars for each day's attendance, and fifteen cents for each mile necessarily traveled in going to and returning from the seat of government; and shall receive no other compensation, perquisite or allowance whatsoever. No session of the general assembly, after the first, shall exceed forty days. After the first session, the compensation of the members of the general assembly shall be as provided by law; provided that no general assembly shall fix its own compensation.

SEC. 7. The general assembly shall meet at 12 o'clock, noon, on the first Wednesday in November, A. D., 1876; and at twelve o'clock noon, on the first Wednesday in January, A. D., 1879, and at twelve o'clock, noon, on the first Wednesday in January of each alternate year forever thereafter, and at other times when convened by the governor. The term of service of the members thereof shall begin on the first Wednesday of November next after their election, until otherwise provided by law.

SEC. 8. No senator or representative shall, during the time for

which he shall have been elected, be appointed to any civil office under this State; and no member of congress, or other person holding any office (except of attorney-at-law, notary public, or in the militia) under the United States, or this State, shall be a member of either house during his continuance in office.

SEC. 9. No member of either house shall, during the term for which he may have been elected, receive any increase of salary or mileage, under any law passed during such term.

SEC. 10. The senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members President *pro tempore.* The house of representatives shall elect one of its members as speaker. Each house shall choose its other officers, and shall judge of the election and qualification of its members.

SEC. 11. A majority of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 12. Each house shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence; to enforce obedience to its process; to protect its members against violence, or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the legislature of a free State. A member expelled for corruption, shall not thereafter be eligible to either house of the same general assembly, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

SEC. 13. Each house shall keep a journal of its proceedings and may in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and noes on any question shall, at the desire of any two members, be entered on the journal.

SEC. 14. The sessions of each house, and of the committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

SEC. 15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 16. The members of the general assembly shall, in all cases except treason, felony, violation of their oath of office, and breach or

surety of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

SEC. 17. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

SEC. 18. The style of the laws of this State shall be; "*Be it enacted by the General Assembly of the State of Colorado.*"

SEC. 19. No act of the general assembly shall take effect until ninety days after its passage, unless in case of emergency (which shall be expressed in the preamble or body of the act) the general assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct. No bill except the general appropriation for the expenses of the government only, introduced in either house of the general assembly after the first twenty-five days of the session, shall become a law.

SEC. 20. No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members.

SEC. 21. No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

SEC. 22. Every bill shall be read at length, on three different days, in each house; all substantial amendments made thereto shall be printed for the use of the members, before the final vote is taken on the bill; and no bill shall become a law except by vote of a majority of all the members elected to each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

SEC. 23. No amendment to any bill by one house shall be concurred in by the other, nor shall the report of any committee of conference be adopted in either house, except by a vote of a majority of the members elected thereto, taken by ayes and noes, and the names of those voting recorded upon the journal thereof.

SEC. 24. No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred, shall be re-enacted and published at length.

SEC. 25. The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys and public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates and constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election, or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; the protection of game or fish; chartering or licensing ferries or toll bridges; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, per centage or allowances of public officers; changing the law of descent; granting to any corporation, association or individual the right to lay down railroad tracks; granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever. In all other cases, where a general law can be made applicable, no special law shall be enacted.

SEC. 26. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the general assembly, after their titles shall have been publicly read, immediately before signing; and the fact of signing shall be entered on the journal.

SEC. 27. The general assembly shall prescribe by law the number, duties and compensation of the officers and employes of each house; and no payment shall be made from the State treasury, or be in any way authorized to any person, except to an acting officer or employe elected or appointed in pursuance of law.

SEC. 28. No bill shall be passed giving any extra compensation to any public officer, servant or employe, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim made against the State without previous authority of law.

SEC. 29. All stationery, printing, paper and fuel used in the legislative and other departments of government, shall be furnished; and

the printing and binding and distributing of the laws, journals, department reports, and other printing and binding; and the repairing and furnishing the halls and rooms used for the meeting of the general assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and state treasurer.

SEC. 30. Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment; *provided*, this shall not be construed to forbid the general assembly to fix the salary or emoluments of those first elected or appointed under this constitution.

SEC. 31. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in case of other bills.

SEC. 32. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the State, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

SEC. 33. No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof.

SEC. 34. No appropriation shall be made for charitable, industrial, educational, or benevolent purposes, to any person, corporation, or community not under the absolute control of the State, nor to any denominational or sectarian institution or association.

SEC. 35. The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise, or interfere with any municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes, or perform any municipal function whatever.

SEC. 36. No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians, or other trustees, in the bonds or stock of any private corporation.

SEC. 37. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such a manner as shall be provided by law.

SEC. 38. No obligation or liability of any person, association, or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, or postponed, or in any way diminished by the general assembly, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury.

SEC. 39. Every order, resolution, or vote to which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of business of the two houses, shall be presented to the governor, and before it shall take effect, be approved by him, or being disapproved, shall be re-passed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill.

SEC. 40. If any person elected to either house of the general assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition, pending or proposed to be introduced in the general assembly, in consideration or upon condition that any other person elected to the same general assembly will give, or will promise, or assent to give his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced in such general assembly, the person making such offer or promise, shall be deemed guilty of solicitation of bribery. If any member of the general assembly shall give his vote or influence for or against any measure or proposition pending in such general assembly, or offer, promise, or assent so to do, upon condition that any other member will give, or will promise, or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such general assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such general assembly, he shall be deemed guilty of bribery, and any member of the general assembly, or person elected thereto, who shall be guilty of either of such offenses, shall be expelled, and shall not be thereafter eligible to the same general assembly; and, on conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

SEC. 41. Any person who shall directly or indirectly offer, give, or promise any money or thing of value, testimonial, privilege, or personal advantage to any executive or judicial officer or member of the general assembly, to influence him in the performance of any of

his public or official duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

SEC. 42. The offense of corrupt solicitation of members of the general assembly, or of public officers of the State, or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

SEC. 43. A member who has a personal or private interest in any measure or bill proposed or pending before the general assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

CONGRESSIONAL AND LEGISLATIVE APPORTIONMENTS.

SEC. 44. One representative in the Congress of the United States shall be elected from the State at large, at the first election under this Constitution, and thereafter at such times and places, and in such manner as may be prescribed by law. When a new apportionment shall be made by Congress, the general assembly shall divide the State into congressional districts accordingly.

SEC. 45. The general assembly shall provide by law for an enumeration of the inhabitants of the State in the year of our Lord 1885, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for senators and representatives on the basis of such enumeration, according to ratios to be fixed by law.

SEC. 46 The senate shall consist of twenty-six, and the house of representatives of forty-nine members, which number shall not be increased until the year of our Lord one thousand eight hundred and ninety, after which time the general assembly may increase the number of senators and representatives, preserving as near as may be, the present proportion as to the number in each house; *provided*, that the aggregate number of senators and representatives shall never exceed one hundred.

SEC. 47. Senatorial and representative districts may be altered from time to time, as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the district as compact as may be. No county shall be divided in the formation of a senatorial or representative district.

SEC. 48. Until the State shall be divided into senatorial districts, in accordance with the provisions of this article, said districts shall be constituted and numbered as follows:

The county of Weld, shall constitute the first district, and be entitled to one senator.

The county of Larimer shall constitute the second district, and be entitled to one senator.

The county of Boulder shall constitute the third district, and be entitled to two senators.

The county of Gilpin shall constitute the fourth district, and be entitled to one senator.

The counties of Gilpin, Summit and Grand shall constitute the fifth district, and be entitled to one senator.

The county of Clear Creek shall constitute the sixth district, and be entitled to two senators.

The county of Jefferson shall constitute the seventh district and be entitled to one senator.

The county of Arapahoe shall constitute the eighth district, and be entitled to four senators.

The counties of Elbert and Bent shall constitute the ninth district, and be entitled to one senator.

The county of El Paso shall constitute the tenth district, and be entitled to one senator.

The county of Douglas shall constitute the eleventh district, and be entitled to one senator.

The county of Park shall constitute the twelfth district, and be entitled to one senator.

The counties of Lake and Saguache shall constitute the thirteenth district and be entitled to one senator.

The county of Fremont shall constitute the fourteenth district, and be entitled to one senator.

The county of Pueblo shall constitute the fifteenth district, and be entitled to one senator.

The county of Huerfano shall constitute the sixteenth district, and be entitled to one senator.

The county of Las Animas shall constitute the seventeenth district, and be entitled to two senators.

The county of Costilla shall constitute the eighteenth district, and be entitled to one senator.

The county of Conejos shall constitute the nineteenth district, and be entitled to one senator.

The counties of Rio Grande, Hinsdale, La Plata and San Juan shall constitute the twentieth district, and be entitled to one senator.

SEC. 49. Until an apportionment of representatives be made, in accordance with the provisions of this article, they shall be divided among the several counties of the State in the following manner: The county of Arapahoe shall have seven; the counties of Boulder and Clear Creek, each, four; the counties of Gilpin and Las Animas, each, three; the counties of El Paso, Fremont, Huerfano, Jefferson, Pueblo and Weld, each, two; the counties of Bent, Costilla, Conejos, Douglas, Elbert, Grand, Hinsdale, Larimer, La Plata, Lake, Park, Rio Grande, Summit, Saguache and San Juan, each, one; and the counties of Costilla and Conejos, jointly, one.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The Judicial power of the State, as to matters of law and equity, except as in this Constitution otherwise provided, shall be vested a supreme court, district courts, county courts, justices of the peace, and such other courts as may be created by law for cities and incorporated towns.

SUPREME COURT.

SEC. 2. The supreme court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.

SEC. 3. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and other original and remedial writs, with authority to hear and determine the same.

SEC. 4. At least two terms of the supreme court shall be held each year at the seat of government.

SEC. 5. The supreme court shall consist of three judges, a majority of whom shall be necessary to form a quorum or pronounce a decision.

SEC. 6. The judges of the supreme court shall be elected by the electors of the State at large, as hereinafter provided.

SEC. 7. The term of office of the judges of the supreme court, except as in this article otherwise provided, shall be nine years.

SEC. 8. The judges of the supreme court shall, immediately after the first election under this Constitution, be classified by lot, so that one shall hold his office for the term of three years, one for the term of six years, and one for the term of nine years. The lot shall be drawn by the judges, who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of the Territory, and filed in his office. The judge having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all terms of the supreme court, and, in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead.

SEC. 9. There shall be a clerk of the supreme court, who shall be appointed by the judges thereof, and shall hold his office during the pleasure of said judges, and whose duties and emoluments shall be as prescribed by law, and by the rules of the supreme court.

SEC. 10. No person shall be eligible to the office of judge of the supreme court unless he be learned in the law; be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this State or Territory at least two years next preceding his election.

DISTRICT COURTS.

SEC. 11. The district courts shall have original jurisdiction of all causes, both at law and in equity, and such appellate jurisdiction as may be conferred by law. They shall have original jurisdiction to determine all controversies upon relation of any person on behalf of the people, concerning the rights, duties and liabilities of railroad, telegraph or toll-road companies or corporations.

SEC. 12. The State shall be divided into judicial districts, in each of which there shall be elected by the electors thereof, one judge of the district court therein, whose term of office shall be six years. The judges of the district courts may hold courts for each other, and shall do so when required by law.

SEC. 13. Until otherwise provided by law, said districts shall be four in number, and constituted as follows, viz:

First District—The counties of Boulder, Jefferson, Gilpin, Clear Creek, Summit, and Grand;

Second District—The counties of Arapahoe, Douglas, Elbert, Weld, and Larimer;

Third District—The counties of Park, El Paso, Fremont, Pueblo, Bent, Las Animas, and Huerfano;

Fourth District—The counties of Costilla, Conejos, Rio Grande, San Juan, La Plata, Hinsdale, Saguache, and Lake.

SEC. 14. The general assembly may, after the year eighteen hundred and eighty (whenever two-thirds of the members of each house shall concur therein), but not oftener than once in six years, increase the number of the judicial districts and the judges thereof; such districts shall be formed of compact territory, and bounded by county lines, but such increase or change in the boundaries of a district shall not work the removal of any judge from his office during the term for which he shall have been elected or appointed.

SEC. 15. The judges of the district court first elected shall be chosen at the first general election. The general assembly may provide that, after the year eighteen hundred and seventy-eight, the election of the judges of the supreme, district, and county courts, and the district attorneys, or any of them, shall be on a different day from that on which an election is held for any other purpose, and for that purpose may extend or abridge the term of office of any such officers then holding, but not in any case more than six months. Until otherwise provided by law, such officers shall be elected at the time of holding the general elections. The terms of office of all judges of the district court elected in the several districts throughout the State, shall expire on the same day; and the terms of office of the district attorneys elected in the several districts throughout the State shall, in like manner, expire on the same day.

SEC. 16. No person shall be eligible to the office of district judge unless he be learned in the law, be at least thirty years old, and a citizen of the United States, nor unless he shall have resided in the State or Territory at least two years next preceding his election, nor unless he shall, at the time of his election, be an elector within the judicial district for which he is elected: *provided*, that at the first election, any person of the requisite age and learning, and who is an elector of the territory of Colorado, under the laws thereof, at the time of the adoption of this Constitution, shall be eligible to the office of judge of the district court of the judicial district within which he is an elector.

SEC. 17. The time of holding courts within the said districts shall

be as provided by law, but at least one term of the district court shall be held annually in each county, except in such counties as may be attached, for judicial purposes, to another county, wherein such courts are so held. This shall not be construed to prevent the holding of special terms, under such regulations as may be provided by law.

SEC. 18. The judges of the supreme and district courts shall each receive such salary as may be provided by law, and no such judge shall receive any other compensation, perquisite, or emolument for or on account of his office, in any form whatever, nor act as attorney or counselor at law.

SEC. 19. There shall be a clerk of the district court in each county wherein a term is held, who shall be appointed by the judge of the district, to hold his office during the pleasure of the judge. His duties and compensation shall be as provided by law, and regulated by the rules of the court.

SEC. 20. Until the general assembly shall provide by law for fixing the terms of the courts aforesaid, the judges of the supreme and district courts, respectively, shall fix the terms thereof.

DISTRICT ATTORNEYS.

SEC. 21. There shall be elected by the qualified electors of each judicial district, at each regular election for judges of the supreme court, a district attorney for such district, whose term of office shall be three years, and whose duties and compensations shall be as provided by law. No person shall be eligible to the office of district attorney, who shall not, at the time of his election, be at least twenty-five years of age, and possess all the other qualifications for judges of district courts, as prescribed in this article.

COUNTY COURTS.

SEC. 22. There shall be elected, at the general election in each organized county, in the year eighteen hundred and seventy-seven, and every three years thereafter, except as otherwise provided in this article, a county judge, who shall be judge of the county court of said county, whose term of office shall be three years, and whose compensation shall be as may be provided by law.

SEC. 23. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians, conservators, and admin-

istrators, and settlement of their accounts, and such other civil and criminal jurisdiction as may be conferred by law; *provided*, such courts shall not have jurisdiction in any case where the debt, damage, or claim, or value of property involved, shall exceed two thousand dollars, except in cases relating to the estates of deceased persons. Appeals may be taken from county to district courts, or to the supreme court, in such cases and in such manner as may be prescribed by law. Writs of error shall lie from the supreme court to every final judgment of the county court. No appeal shall lie to the district court from any judgment given upon an appeal from a justice of the peace.

CRIMINAL COURT.

SEC. 24. The general assembly shall have power to create and establish a criminal court in each county having a population exceeding fifteen thousand, which court may have concurrent jurisdiction with the district courts in all criminal cases not capital; the terms of such courts to be as provided by law.

JUSTICES OF THE PEACE.

SEC. 25. Justices of the peace shall have such jurisdiction as may be conferred by law; but they shall not have jurisdiction of any case wherein the value of the property, or the amount in controversy, exceeds the sum of three hundred dollars, nor where the boundaries or title to real property shall be called in question.

POLICE MAGISTRATES.

SEC. 26. The general assembly shall have power to provide for creating such police magistrates for cities and towns, as may be deemed from time to time necessary or expedient, who shall have jurisdiction of all cases arising under the ordinances of such cities and towns respectively.

MISCELLANEOUS.

SEC. 27. The judges of courts of record, inferior to the supreme court, shall, on or before the first day in July in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their knowledge and experience may suggest,

and the judges of the supreme court shall, on or before the first day of December of each year, report in writing to the governor, to be by him transmitted to the general assembly, together with his message, such defects and omissions in the Constitution and laws as they may find to exist, together with appropriate bills for curing the same.

SEC. 28. All laws relating to courts shall be general and of uniform operation throughout the State; and the organization, jurisdiction, powers, proceedings and practice of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments and decrees of such courts severally, shall be uniform.

SEC. 29. All officers provided for in this article, excepting judges of the supreme court, shall respectively reside in the district, county, precinct, city or town for which they may be elected or appointed. Vacancies in elective offices shall be filled by election, but when the unexpired term does not exceed one year the vacancy shall be filled by appointment, as follows: Of judges of the supreme and district courts, by the governor; of district attorneys, by the judge of the court to which the office appertains, and of all other judicial officers by the board of county commissioners of the county where the vacancy occurs.

SEC. 30. All process shall run in the name of "The people of the State of Colorado;" all prosecutions shall be carried on in the name and by the authority of "The people of the State of Colorado," and conclude, "against the peace and dignity of the same."

ARTICLE VII.

SUFFRAGE AND ELECTIONS.

SECTION 1. Every male person over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections:

First—He shall be a citizen of the United States, or, not being a citizen of the United States, he shall have declared his intention, according to law, to become such citizen, not less than four months before he offers to vote.

Second—He shall have resided in the State six months immediately preceding the election at which he offers to vote, and in the county, city, town, ward or precinct, such time as may be prescribed by law;

provided, that no person shall be denied the right to vote at any school district election, nor to hold any school district office, on account of sex.

SEC. 2. The general assembly shall, at the first session thereof, and may at any subsequent session, enact laws to extend the right of suffrage to women of lawful age, and otherwise qualified according to the provisions of this article. No such enactment shall be of effect until submitted to the vote of the qualified electors at a general election, nor unless the same be approved by a majority of those voting thereon.

SEC. 3. The general assembly may prescribe, by law, an educational qualification for electors, but no such law shall take effect prior to the year of our Lord one thousand eight hundred and ninety, (1890), and no qualified elector shall be thereby disqualified.

SEC, 4. For the purpose of voting and eligibility to office, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while in the civil or military service of the State, or of the United States, nor while a student at any institution of learning, nor while kept at public expense in any poor-house or other asylum, nor while confined in public prison.

SEC. 5. Voters shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

SEC. 6. No person except a qualified elector shall be elected or appointed to any civil or military office in the State.

SEC. 7. The general election shall be held on the first Tuesday of October, in the years of our Lord eighteen hundred and seventy-six, eighteen hundred and seventy-seven, and eighteen hundred and seventy-eight, and annually thereafter on such day as may be prescribed by law.

SEC. 8. All elections by the people shall be by ballot; every ballot voted shall be numbered in the order in which it shall be received, and the number be recorded by the election officers on the list of voters opposite the name of the voter who presents the ballot. The election officers shall be sworn or affirmed not to enquire or disclose how any elector shall have voted. In all cases of contested elections, the ballots cast may be counted, compared with the list of voters, and examined under such safeguards and regulations as may be prescribed by law.

SEC. 9. In trials of contested elections, and for offenses arising under the election law, no person shall be permitted to withhold his testimony on the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not be used against him in any judicial proceeding, except for perjury in giving such testimony.

SEC. 10. No person while confined in any public prison shall be entitled to vote; but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom by virtue of a pardon, or by virtue of having served out his full term of imprisonment, shall, without further action, be invested with all the rights of citizenship, except as otherwise provided in this Constitution.

SEC. 11. The general assembly shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise.

SEC. 12. The general assembly shall, by general law, designate the courts and judges by whom the several classes of election contests, not herein provided for, shall be tried, and regulate the manner of trial, and all matters incident thereto; but no such law shall apply to any contest arising out of an election held before its passage.

ARTICLE VIII.

STATE INSTITUTIONS.

SECTION 1. Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and supported by the State, in such manner as may be prescribed by law.

SEC. 2. The general assembly shall have no power to change or to locate the seat of government of the State, but shall at its first session subsequent to the year of our Lord one thousand eight hundred and eighty, provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the State, at the general election then next ensuing, and a majority of all the votes upon said question cast at said election, shall be necessary to determine the location thereof. Said general assembly

shall also provide that in case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the State, at the next general election; *provided*, that until the seat of government shall have been permanently located as herein provided, the temporary location thereof shall remain at the city of Denver.

SEC. 3. When the seat of government shall have been located as herein provided, the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the State voting on that question, at a general election, at which the question of location of the seat of government shall have been submitted by the general assembly.

SEC. 4. The general assembly shall make no appropriation or expenditure for capitol buildings or grounds, until the seat of government shall have been permanently located, as herein provided.

SEC. 5. The following Territorial institutions, to-wit: The University at Boulder, the Agricultural College at Fort Collins, the School of Mines at Golden, the Institute for the Education of Mutes at Colorado Springs, shall, upon the adoption of this Constitution, become institutions of the State of Colorado, and the management thereof subject to the control of the State, under such laws and regulations as the general assembly shall provide; and the location of said institutions, as well as all gifts, grants, and appropriations of money and property, real and personal, heretofore made to said several institutions, are hereby confirmed to the use and benefit of the same respectively; *provided*, this section shall not apply to any institution, the property, real or personal, of which is now vested in the trustees thereof, until such property be transferred by proper conveyance, together with the control thereof, to the officers provided for the management of said institution by this Constitution, or by law.

ARTICLE IX.

EDUCATION.

SECTION 1. The general supervision of the public schools of the State shall be vested in a board of education, whose powers and duties shall be prescribed by law; the superintendent of public instruction, the secretary of state, and attorney general, shall consti-

tute the board, of which the superintendent of public instruction shall be president.

SEC. 2. The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the State, wherein all residents of the State between the ages of six and twenty-one years may be educated gratuitously. One or more public schools shall be maintained in each school district within the State, at least three months in each year; any school district failing to have such school shall not be entitled to receive any portion of the school fund for that year.

SEC. 3. The public school fund of the State shall forever remain inviolate and intact; the interest thereon, only, shall be expended in the maintenance of the schools of the State, and shall be distributed amongst the several counties and school districts of the State, in such manner as may be prescribed by law. No part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested, as may be by law directed. The State shall supply all losses thereof that may in any manner occur.

SEC. 4. Each county treasurer shall collect all school funds belonging to his county, and the several school districts therein, and disburse the same to the proper districts upon warrants drawn by the county superintendent, or by the proper district authorities, as may be provided by law.

SEC. 5. The public school fund of the State shall consist of the proceeds of such lands as have heretofore been, or may hereafter be granted to the State by the general government for educational purposes; all estates that may escheat to the State; also all other grants, gifts or devises that may be made to to this State for educational purpose.

SEC. 6. There shall be a county superintendent of schools in each county, whose term of office shall be two years, and whose duties, qualifications, and compensation shall be prescribed by law. He shall be *ex-officio* commissioner of lands within his county, and shall discharge the duties of said office under the direction of the state board of land commissioners, as directed by law.

SEC. 7. Neither the general assembly, nor any county, city, town, township, school district, or other public corporation, shall ever make

any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money, or other personal property, ever be made by the State, or any such public corporation, to any church or for any sectarian purpose.

SEC. 8. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in, any religious service whatever. No sectarian tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color.

SEC. 9. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the State board of land commissioners, who shall have the direction, control and disposition of the public lands of the State, under such regulations as may be prescribed by law.

SEC. 10. It shall be the duty of the State board of land commissioners to provide for the location, protection, sale or other disposition of all the lands heretofore or which may hereafter be granted to the State by the general government, under such regulations as may be prescribed by law; and in such manner as will secure the maximum possible amount therefor. No law shall ever be passed by the general assembly granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The general assembly shall, at the earliest practicable period, provide by law that the several grants of land made by Congress to the State shall be judiciously located and carefully preserved and held in trust subject to disposal, for the use and benefit of the respective objects for which said grants of land were made, and the general assembly shall provide for the sale of said lands from time to time; and for the faithful application of the proceeds thereof in accordance with the terms of said grants.

SEC. 11. The general assembly may require, by law, that every

child of sufficient mental and physical ability, shall attend the public school during the period between the ages of six and eighteen years, for a time equivalent to three years, unless educated by other means.

SEC. 12. There shall be elected by the qualified electors of the State, at the first general election under this Constitutution, six regents of the university, who shall immediately after their election be so classified, by lot, that two shall hold their office for the term of two years, two for four years, and two for six years; and every two years after the first election there shall be elected two regents of the university, whose term of office shall be six years. The regents thus elected, and their successors, shall constitute a body corporate, to be known by the name and style of "The Regents of the University of Colorado."

SEC. 13. The regents of the university shall, at their first meeting or as soon thereafter as practicable, elect a president of the university, who shall hold his office until removed by the board of regents for cause; he shall be, *ex officio*, a member of the board, with the privilege of speaking but not of voting, except in cases of a tie; he shall preside at the meetings of the board, and be the principal executive officer of the university, and a member of the faculty thereof.

SEC. 14. The board of regents shall have the general supervision of the university, and the exclusive control and direction of all funds of, and appropriations to, the university.

SEC. 15. The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors, to be elected by the qualified electors of the district. Said directors shall have control of instruction in the public schools of their respective districts.

SEC. 16. Neither the general assembly nor the State board of education shall have power to prescribe text books to be used in the public schools.

ARTICLE X.

REVENUE.

SECTION 1. The fiscal year shall commence on the first day of October in each year, unless otherwise provided by law.

SEC. 2. The general assembly shall provide by law for an annual

tax sufficient, with other resources, to defray the estimated expenses of the State government for each fiscal year.

SEC. 3. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal; *provided*, that mines and mining claims bearing gold, silver, and other precious metals, (except the net proceeds and surface improvements thereof,) shall be exempt from taxation for the period of ten years from the date of the adoption of this Constitution, and thereafter may be taxed as provided by law. Ditches, canals, and flumes owned and used by individuals or corporations for irrigating lands owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed, so long as they shall be owned and used exclusively for such purpose.

SEC. 4. The property, real and personal, of the State, counties, cities, towns, and other municipal corporations, and public libraries, shall be exempt from taxation.

SEC. 5. Lots, with the buildings thereon, if said buildings are used solely and exclusively for religious worship, for schools, or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law.

SEC. 6. All laws exempting from taxation property other than that hereinbefore mentioned, shall be void.

SEC. 7. The general assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may, by law, vest in the corporate authorities thereof respectively the power to assess and collect taxes for all purposes of such corporation.

SEC. 8. No county, city, town, or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes.

SEC. 9. The power to tax corporations and corporate property, real and personal, shall never be relinquished or suspended.

SEC. 10. All corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal, and

other purposes, on the real and personal property owned or used by them within the territorial limits of the authority levying the tax.

SEC. 11. The rate of taxation on property, for State purposes, shall never exceed six mills on each dollar of valuation; and whenever the taxable property within the State shall amount to one hundred million dollars, the rate shall not exceed four mills on each dollar of valuation; and whenever the taxable property within the State shall amount to three hundred million dollars, the rate shall never thereafter exceed two mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed, and the time during which the same shall be levied, be first submitted to a vote of such of the qualified electors of the State as in the year next preceding such election, shall have paid a property tax assessed to them within the State, and a majority of those voting thereon shall vote in favor thereof, in such manner as may be provided by law.

SEC. 12. The treasurer shall keep a separate account of each fund in his hands; and shall, at the end of each quarter of the fiscal year, report to the governor, in writing, under oath, the amount of all moneys in his hands to the credit of every such fund, and the place where the same are kept or deposited, and the number and amount of every warrant received, and the number and amount of every warrant paid therefrom during the quarter. Swearing falsely to any such report shall be deemed perjury. The governor shall cause every such report to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the general assembly may require. The general assembly may provide by law further regulations for the safe-keeping and management of the public funds in the hands of the treasurer, but, notwithstanding any such regulation, the treasurer and his sureties shall in all cases be held responsible therefor.

SEC. 13. The making of profit, directly or indirectly, out of State, county, city, town or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

SEC. 14. Private property shall not be taken or sold for the payment of the corporate debt of municipal corporations.

SEC. 15. There shall be a State board of equalization, consisting of the governor, State auditor, State treasurer, secretary of State, and attorney general; also, in each county of this State, a county

board of equalization, consisting of the board of county commisioners of said county. The duty of the State board of equalization shall be to adjust and equalize the valuation of real and personal property among the several counties of the State. The duty of the county board of equalization shall be to adjust and equalize the valuation of real and personal property within their respective counties. Each board shall also perform such other duties as may be prescribed by law.

SEC. 16. No appropriation shall be made, nor any expenditure authorized by the general assembly, whereby the expenditure of the State, during any fiscal year, shall exceed the total tax then provided for by law and applicable for such appropriation or expenditure, unless the general assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section eleven of this article, to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the State, or assist in defending the United States in time of war.

ARTICLE XI.

PUBLIC INDEBTEDNESS.

SECTION 1. Neither the State, nor any county, city, town, township or school district, shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to or in aid of any person, company or corporation, public or private, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any person, company or corporation, public or private, in or out of the State.

SEC. 2. Neither the State nor any county, city, town, township or school district, shall make any donation or grant to, or in aid of, or become a subscriber to, or shareholder in, any corporation or company, or a joint owner with any person, company or corporation, public or private, in or out of the State, except as to such ownership as may accrue to the State by escheat, or by forfeiture, by operation or provision of law; and except as to such ownership as may accrue to the State, or to any county, city, town, township or school district, or to either or any of them, jointly with any person, company or cor-

poration, by forfeiture or sale of real estate for non-payment of taxes, or by donation or devise for public use, or by purchase by or on behalf of any or either of them, jointly with any or either of them, under execution in cases of fines, penalties or forfeiture of recognizance, breach of condition of official bond, or of bond to secure public moneys, or the performance of any contract in which they or any of them may be jointly or severally interested.

SEC. 3. The State shall not contract any debt by loan, in any form, except to provide for casual deficiencies of revenue, erect public buidings for use of the State, suppress insurrection, defend the State, or, in time of war, assist in defending the United States; and the amount of the debt contracted in any one year to provide for deficiencies of revenue shall not exceed one-fourth of a mill on each dollar of valuation of taxable property within the State, and the aggregate amount of such debt shall not at any time exceed three-fourths of a mill on each dollar of said valuation until the valuation shall equal one hundred millions of dollars, and thereafter such debt shall not exceed one hundred thousand dollars, and the debt incurred in any one year for erection of public buildings shall not exceed one-half mill on each dollar of said valuation, and the aggregate amount of such debt shall never at any time exceed the sum of fifty thousand dollars (except as provided in section five of this article), and in all cases the valuation in this section mentioned shall be that of the assessment last preceeding the creation of said debt.

SEC. 4. In no case shall any debt above mentioned in this article be created except by a law which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purposes to which the funds so raised shall be applied, and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of, such debt, within the time limited by such law for the payment thereof, which in the case of debts contracted for the erection of public buildings and supplying deficiencies of revenue, shall not be less than ten nor more than fifteen years, and the funds arising from the collection of any such tax shall not be applied to any other purpose than that provided in the law levying the same; and when the debt thereby created shall be paid or discharged, such tax shall cease, and the balance if any, to the credit of the fund, shall immediately be placed to the credit of the general fund of the State.

SEC. 5. A debt for the purpose of erecting public buildings may be created by law, as provided for in section four of this article, not exceeding in the aggregate three mills on each dollar of said valuation; *provided*, that before going into effect, such law shall be ratified by the vote of a majority of such qualified electors of the State as shall vote thereon at a general election, under such regulations as the general assembly may prescribe.

SEC. 6. No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county, following, to wit: Counties in which the assessed valuation of taxable property shall exceed five millions of dollars, one dollar and fifty cents on each thousand dollars thereof. Counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof. And the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this Constitution, shall not at any time exceed twice the amount above herein limited, unless when in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned; *provided*, that this section shall not apply to counties having a valuation of less than one million of dollars.

SEC. 7. No debt by loan in any form shall be contracted by any school district for the purpose of erecting and furnishing school buildings, or purchasing grounds, unless the proposition to create such debt shall first be submitted to such qualified electors of the district as shall have paid a school tax therein, in the year next preceding such election, and a majority of those voting thereon shall vote in favor of incurring such debt.

SEC. 8. No city or town shall contract any debt by loan in any form, except by means of an ordinance, which shall be irrepealable, until the indebtedness therein provided for shall have been fully paid

or discharged; specifying the purposes to which the funds to be raised shall be applied, and providing for the levy of a tax, not exceeding twelve (12) mills on each dollar of valuation of taxable property within such city or town, sufficient to pay the annual interest, and extinguish the principal of such debt within fifteen, but not less than ten years from the creation thereof; and such tax when collected shall be applied only to the purposes in such ordinance specified, until the indebtedness shall be paid or discharged. But no such debt shall be created unless the question of incurring the same shall at a regular election for councilmen, aldermen or officers of such city or town, be submitted to a vote of such qualified electors thereof as shall, in the year next preceding, have paid a property tax therein, and a majority of those voting on the question, by ballot deposited in a separate ballot-box, shall vote in favor of creating such debt; but the aggregate amount of debt so created, together with the debt existing at the time of such election, shall not at any time exceed three per cent. of the valuation last aforesaid. Debts contracted for supplying water to such city or town are excepted from the operation of this section. The valuation in this section mentioned shall be in all cases that of the assessment next preceding the last assessment before the adoption of such ordinance.

SEC. 9. Nothing contained in this article shall be so construed as to either impair or add to the obligation of any debt heretofore contracted by any county, city, town, or school district, in accordance with the laws of Colorado Territory, or prevent the contracting of any debt, or the issuing of bonds therefor, in accordance with said laws, upon any proposition for that purpose which may have been, according to said laws, submitted to a vote of the qualified electors of any county, city, town, or school district, before the day on which this Constitution takes effect.

ARTICLE XII.

OFFICERS.

SECTION 1. Every person holding any civil office under the State, or any municipality therein, shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified; but this shall not apply to members of the general assembly, nor to

members of any board or assembly, two or more of whom are elected at the same time; the general assembly may by law provide for suspending any officer in his functions, pending impeachment or prosecution for misconduct in office.

SEC. 2. No person shall hold any office or employment of trust or profit, under the laws of the State, or any ordinance of any municipality therein, without devoting his personal attention to the duties of the same.

SEC. 3. No person who is now or hereafter may become a collector or receiver of public money, or the deputy or assistant of such collector or receiver, and who shall have become a defaulter in his office, shall be eligible to or assume the duties of any office of trust or profit in this State, under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all public money for which he may be accountable.

SEC. 4. No person hereafter convicted of embezzlement of public moneys, bribery, perjury, solicitation of bribery, or subornation of perjury, shall be eligible to the general assembly, or capable of holding any office of trust or profit in this State.

SEC. 5. The district court of each county shall, at each term thereof, specially give in charge to the grand jury, if there be one, the laws regulating the accountability of the county treasurer, and shall appoint a committee of such grand jury, or of other reputable persons, not exceeding five, to investigate the official accounts and affairs of the treasurer of such county, and report to the court the condition thereof. The judge of the district court may appoint a like committee in vacation at any time, but not oftener than once in every three months. The district court of the county wherein the seat of government may be, shall have the like power to appoint committees to investigate the official accounts and affairs of the state treasurer and the auditor of state.

SEC. 6. Any civil officer or member of the general assembly who shall solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment, or of personal advantage, or promise thereof, for his vote, official influence or action, or for withholding the same, or with an understanding that his official influence or action shall [be] in any way influenced thereby, or who shall solicit or demand any such money or advantage, matter or thing aforesaid

for another, as the consideration of his vote, official influence or action, or for withholding the same, or shall give or withhold his vote, official influence or action, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery, or solicitation of bribery, as the case may be, within the meaning of this Constitution, and shall incur the disabilities provided thereby for such offense, and such additional punishment as is or shall be prescribed by law.

SEC. 7. Every member of the general assembly shall, before he enters upon his official duties, take an oath or affirmation to support the Constitution of the United States and of the State of Colorado, and to faithfully perform the duties of his office according to the best of his ability. This oath, or affirmation, shall be administered in the hall of the house to which the member shall have been elected.

SEC. 8. Every civil officer, except members of the general assembly and such inferior officers as may be by law exempted, shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation to support the Constitution of the United States and of the State of Colorado, and to faithfully perform the duties of the office upon which he shall be about to enter.

SEC. 9. Officers of the executive department and judges of the supreme and district courts, and district attorneys, shall file their oaths of office with the secretary of State; every other officer shall file his oath of office with the county clerk of the county wherein he shall have been elected.

SEC. 10. If any person elected or appointed to any office shall refuse or neglect to qualify therein within the time prescribed by law, such office shall be deemed vacant.

SEC. 11. The term of office of any officer elected to fill a vacancy, shall terminate at the expiration of the term during which the vacancy occurred.

SEC. 12. No person who shall hereafter fight a duel, or assist in the same as a second, or send, accept or knowingly carry a challenge therefor, or agree to go out of the State to fight a duel, shall hold any office in the State.

ARTICLE XIII.

IMPEACHMENTS.

SECTION 1. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the senate, and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

SEC. 2. The governor and other State and judicial officers, except county judges and justices of the peace, shall be liable to impeachment for high crimes or misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust or profit in the State. The party, whether convicted or acquitted, shall nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

SEC. 3. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

ARTICLE XIV.

COUNTIES.

SECTION 1. The several counties of the Territory of Colorado, as they now exist, are hereby declared to be counties of the State.

SEC. 2. The general assembly shall have no power to remove the county seat of any county, but the removal of county seats shall be provided for by general law, and no county seat shall be removed unless a majority of the qualified electors of the county, voting on the proposition at a general election, vote therefor; and no such proposition shall be submitted oftener than once in four years, and no person shall vote on such proposition who shall not have resided in the county six months and in the election precinct ninety days next preceding such election.

SEC. 3. No part of the territory of any county shall be stricken

off and added to an adjoining county without first submitting the question to the qualified voters of the county from which the territory is proposed to be stricken off; nor unless a majority of all the qualified voters of said county voting on the question shall vote therefor.

SEC. 4. In all cases of the establishment of any new county, the new county shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which such new county shall be formed.

SEC. 5. When any part of a county is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

COUNTY OFFICERS.

SEC. 6. In each county there shall be elected for the term of three years, three county commissioners, who shall hold sessions for the transaction of county business as provided by law; any two of whom shall constitute a quorum for the transaction of business. One of said commissioners shall be elected on the first Tuesday in October, eighteen hundred and seventy-six, and every year thereafter one such officer shall be elected in each county, at the general election, for the term of three years; *provided*, that when the population of any county shall exceed ten thousand, the board of county commissioners may consist of five members, who shall be elected as provided by law, any three of whom shall constitute a quorum for the transaction of business.

SEC. 7. The compensation of all county and precinct officers shall be as provided by law.

SEC. 8. There shall be elected in each county, on the first Tuesday in October, in the year eighteen hundred and seventy-seven, and every alternate year forever thereafter, one county clerk, who shall be *ex-officio* recorder of deeds and clerk of the board of county commissioners; one sheriff; one coroner; one treasurer, who shall be collector of taxes; one county superintendent of schools; one county surveyor, and one county assessor.

SEC. 9. In case of a vacancy occurring in the office of county commissioner, the governor shall fill the same by appointment; and in case of a vacancy in any other county office, or in any precinct office, the board of county commissioners shall fill the same by appointment; and the person appointed shall hold the office until the

next general election, or until the vacancy be filled by election according to law.

SEC. 10. No person shall be eligible to any county office unless he shall be a qualified elector; nor unless he shall have resided in the county one year preceding his election.

SEC. 11. There shall, at the first election at which county officers are chosen, and annually thereafter, be elected in each precinct one justice of the peace and one constable, who shall each hold his office for the term of two years; *provided*, that in precincts containing five thousand or more inhabitants, the number of justices and constables may be increased as provided by law.

SEC. 12. The general assembly shall provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require; and their terms of office shall be as prescribed by law, not in any case to exceed two years.

SEC. 13. The general assembly shall provide, by general laws, for the organization and classification of cities and towns. The number of such classes shall not exceed four, and the powers of each class shall be defined by general laws, so that all municipal corporations of the same class shall possess the same powers, and be subject to the same restrictions.

SEC. 14. The general assembly shall also make provision, by general law, whereby any city, town or village, incorporated by any special or local law, may elect to become subject to and be governed by the general law relating to such corporations.

SEC. 15. For the purpose of providing for and regulating the compensation of county and precinct officers, the general assembly shall, by law, classify the several counties of the State according to population, and shall grade and fix the compensation of the officers within the respective classes according to the population thereof. Such law shall establish scales of fees to be charged and collected by such of the county and precinct officers as may be designated therein, for services to be performed by them respectively; and where salaries are provided, the same shall be payable only out of the fees actually collected in all cases where fees are prescribed. All fees, perquisites and emoluments, above the amount of such salaries, shall be paid into the county treasury.

ARTICLE XV.

CORPORATIONS.

SECTION 1. All existing charters or grants of special or exclusive privileges, under which the corporators or grantees shall not have organized and commenced business in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

SEC. 2. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the State; but the general assembly shall provide by general laws for the organization of corporations hereafter to be created.

SEC. 3. The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of the State, in such manner, however, that no injustice shall be done to the corporators.

SEC. 4. All railroads shall be public highways, and all railroad companies shall be common carriers. Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this State, and to connect at the State line with railroads of other States and Territories. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad.

SEC. 5. No railroad corporation, or the lessees or managers thereof, shall consolidate its stock, property or franchises with any other railroad corporation owning or having under its control a parallel or competing line.

SEC. 6. All individuals, associations and corporations shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or in facilities for transportation of freight or passengers within the State, and no railroad company, nor any lessee, manager or employé thereof, shall give any preference to individuals, associations or corporations in furnishing cars or motive power.

SEC. 7. No railroad or other transportation company in existence

at the time of the adoption of this Constitution, shall have the benefit of any future legislation without first filing in the office of the secretary of State an acceptance of the provisions of this Constitution, in binding form.

SEC. 8. The right of eminent domain shall never be abridged, nor so construed as to prevent the general assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

SEC. 9. No corporation shall issue stocks or bonds, except for labor done, service performed, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock, first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

SEC. 10. No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served.

SEC. 11. No street railroad shall be constructed within any city, town, or incorporated village, without the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

SEC. 12. The general assembly shall pass no law for the benefit of a railroad or other corporation, or any individual, or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transactions or considerations already past.

SEC. 13. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and to connect the same with other lines, and the general assembly shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph company owning or having the control of a com-

peting line, or acquire, by purchase or otherwise, any other competing line of telegraph.

SEC. 14. If any railroad, telegraph, express or other corporation organized under any of the laws of this State, shall consolidate, by sale or otherwise, with any railroad, telegraph, express, or other corporation organized under any laws of any other State or Territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State in all matters which may arise, as if said consolidation had not taken place.

SEC. 15. It shall be unlawful for any person, company or corporation to require of its servants or employes, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof, and such contracts shall be absolutely null and void.

ARTICLE XVI.

MINING AND IRRIGATION.

MINING.

SECTION 1. There shall be established and maintained the office of commissioner of mines, the duties and salary of which shall be prescribed by law. When said office shall be established, the governor shall, with the advice and consent of the senate, appoint thereto a person known to be competent, whose term of office shall be four years.

SEC. 2. The general assembly shall provide by law for the proper ventilation of mines, the construction of escapement shafts, and such other appliances as may be necessary to protect the health and secure the safety of the workmen therein; and shall prohibit the employment in the mines of children under twelve years of age.

SEC. 3. The general assembly may make such regulations, from time to time, as may be necessary for the proper and equitable drainage of mines.

SEC. 4. The general assembly may provide that the science of

mining and metallurgy be taught in one or more of the institutions of learning under the patronage of the State.

IRRIGATION.

SEC. 5. The water of every natural stream, not heretofore appropriated, within the State of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided.

SEC. 6. The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes.

SEC. 7. All persons and corporations shall have the right of way across public, private and corporate lands for the construction of ditches, canals and flumes, for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation.

SEC. 8. The general assembly shall provide by law that the board of county commissioners, in their respective counties, shall have power, when application is made to them by either party interested, to establish reasonable maximum rates to be charged for the use of water, whether furnished by individuals or corporations.

ARTICLE XVII.

MILITIA.

SECTION 1. The militia of the State shall consist of all able bodied male residents of the State, between the ages of eighteen and forty-five years; except such persons as may be exempted by the laws of the United States, or of the State.

SEC. 2. The organization, equipment and discipline of the militia

shall conform, as nearly as practicable, to the regulations for the government of the armies of the United States.

SEC. 3. The governor shall appoint all general, field and staff officers, and commission them. Each company shall elect its own officers, who shall be commissioned by the governor; but if any company shall fail to elect such officers within the time prescribed by law, they may be appointed by the governor.

SEC. 4. The general assembly shall provide for the safe-keeping of the public arms, military records, relics and banners of the State.

SEC. 5. No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace; *provided*, such person shall pay an equivalent for such exemption.

ARTICLE XVIII.

MISCELLANEOUS.

SECTION 1. The general assembly shall pass liberal homestead and exemption laws.

SEC. 2. The general assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this State.

SEC. 3. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by mutual agreement of the parties to any controversy, who may choose that mode of adjustment. The powers and duties of such arbitrators shall be as prescribed by law.

SEC. 4. The term felony, wherever it may occur in this Constitution, or the laws of the State, shall be construed to mean any criminal offense punishable by death or imprisonment in the penitentiary, and none other.

SEC. 5. The general assembly shall prohibit by law the importation into this State, for the purpose of sale, of any spurious, poisonous or drugged spirituous liquors, or spirituous liquors adulterated with any poisonous or deleterious substance, mixture or compound; and shall prohibit the compounding or manufacture within this State, except for chemical or mechanical purposes, of any of said liquors, whether they be denominated spirituous, vinous, malt or otherwise; and shall also prohibit the sale of any such liquors to be used as a

beverage, and any violation of either of said prohibitions shall be punished by fine and imprisonment. The general assembly shall provide by law for the condemnation and destruction of all spurious, poisonous or drugged liquors herein prohibited.

SEC. 6. The general assembly shall enact laws in order to prevent the destruction of, and to keep in good preservation the forests upon the lands of the State, or upon lands of the public domain, the control of which shall be conferred by congress upon the State.

SEC. 7. The general assembly may provide that the increase in the value of private lands, caused by the planting of hedges, orchards and forests thereon, shall not, for a limited time, to be fixed by law, be taken into account in assessing such lands for taxation.

SEC. 8. The general assembly shall provide for the publication of the laws passed at each session thereof; and, until the year 1900 they shall cause to be published in Spanish and German, a sufficient number of copies of said laws to supply that portion of the inhabitants of the State who speak those languages, and who may be unable to read and understand the English language.

ARTICLE XIX.

AMENDMENTS.

SECTION 1. The general assembly may, at any time, by a vote of two-thirds of the members elected to each house, recommend to the electors of the State, to vote at the next general election, for or against a convention to revise, alter, and amend this Constitution; and if a majority of those voting on the question shall declare in favor of such convention, the general assembly shall, at its next session, provide for the calling thereof. The number of members of the convention shall be twice that of the senate, and they shall be elected in the same manner, at the same places, and in the same districts. The general assembly shall, in the act calling the convention, designate the day, hour, and place of its meeting; fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the Constitution of the United States and of the State of Colorado, and to faithfully discharge their duties as members of the convention. The

qualifications of members shall be the same as of members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the general assembly. Said convention shall meet within three months after such election, and prepare such revisions, alterations, or amendments to the Constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection, at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration, or amendment shall take effect.

SEC. 2. Any amendment or amendments to this Constitution may be proposed in either house of the general assembly, and if the same shall be voted for by two-thirds of all the members elected to each house, such proposed amendments, together with the ayes and noes of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county, (if such there be,) for three months previous to the next general election for members to the general assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the State for their approval or rejection, and such as are approved by a majority of those voting thereon, shall become part of this Constitution; but the general assembly shall have no power to propose amendments to more than one article of this Constitution at the same session.

SCHEDULE.

That no inconvenience may arise by reason of the change in the form of government, it is hereby ordained and declared:

SECTION 1. That all laws in force at the adoption of this Constitution shall, so far as not inconsistent therewith, remain of the same force as if this Constitution had not been adopted, until they expire by their own limitation, or are altered or repealed by the general assembly; and all rights, actions, prosecutions, claims, and contracts of the Territory of Colorado, counties, individuals, or bodies corporate, (not inconsistent therewith,) shall continue as if the form of government had not been changed and this Constitution adopted.

SEC. 2. That all recognizances, obligations, and all other instruments entered into or executed before the admission of the State, to the Territory of Colorado, or to any county, school district, or other municipality therein, or any officer thereof, and all fines, taxes, penalties, and forfeitures due or owing to the Territory of Colorado, or any such county, school district, or municipality, or officer, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the change of the form of government. All indictments which shall have been found, or may hereafter be found, and all informations which shall have been filed, or may hereafter be filed, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in the Constitution.

SEC. 3. That all property, real and personal, and all moneys, credits, claims, and choses in action, belonging to the Territory of Colorado, at the adoption of this Constitution, shall be vested in and become the property of the State of Colorado.

SEC. 4. The general assembly shall pass all laws necessary to carry into effect the provisions of this Constitution.

SEC. 5. Whenever any two of the judges of the supreme court of the State, elected or appointed under the provisions of this Constitution, shall have qualified in their office, the causes theretofore pending in the supreme court of the Territory, and the papers, records and proceedings of said court, and the seal and other property pertaining thereto shall pass into the jurisdiction and possession of the supreme court of the State; and, until so superceded, the supreme court of the Territory, and the judges thereof, shall continue with like powers and jurisdiction as if this Constitution had not been adopted. Whenever the judge of the district court of any district, elected or appointed under the provisions of this Constitution, shall have qualified in his office, the several causes theretofore pending in the district court of the Territory, within any county in such district, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the State for such county, and until the district courts of the Territory shall be superceded in manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and powers to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the Territory.

SEC. 6. The terms of office of the several judges of the supreme and district courts and the district attorneys of the several judicial districts first elected under this Constitution, shall commence from the day of filing their respective oaths of office in the office of the secretary of State.

SEC. 7. Until otherwise provided by law, the seals now in use in the supreme and district courts of this Territory are hereby declared to be the seals of the supreme and district courts respectively of the State.

SEC. 8. Whenever this Constitution shall go into effect, the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration pending therein shall pass into the jurisdiction and possession of the county court of the same county, and the said county court shall proceed to final decree or judgment, order or other determination, in the said several matters and causes as the said probate court might have done, if this Constitution had not been adopted. And until the election of the county judges provided for in this Constitution, the probate judges shall act as judges of the county courts within their respective counties, and the seal of the probate court in each county shall be the seal of the county court therein until the said court shall have procured a proper seal.

SEC. 9. The terms "probate court", or "probate judge," whenever occuring in the statutes of Colorado Territory, shall, after the adoption of this Constitution, be held to apply to the county court or county judge; and all laws specially applicable to the probate court in any county, shall be construed to apply to and be in force as to the county court in the same county, until repealed.

SEC. 10. All county and precinct officers who may be in office at the time of the adoption of this Constitution, shall hold their respective offices for the full time for which they may have been elected, and until such time as their successors may be elected and qualified, in accordance with the provisions of this Constitution, and the official bonds of all such officers shall continue in full force and effect as though this Constitution had not been adopted.

SEC. 11. All county offices that may become vacant during the year eighteen hundred and seventy-six, by the expiration of the term of the persons elected to said offices, shall be filled at the general election on the first Tuesday in October, in the year eighteen hundred and seventy-six, and except county commissioners the per-

sons so elected shall hold their respective offices for the term of one year.

SEC. 12. The provisions of this Constitution shall be in force from the day on which the President of the United States shall issue his proclamation declaring the State of Colorado admitted into the Union; and the governor, secretary, treasurer, auditor and superintendent of public instruction of the Territory of Colorado shall continue to discharge the duties of their respective offices after the admission of the State into the Union, until the qualification of the officers elected or appointed under the State government; and said officers, for the time they may serve, shall receive the same compensation as the State officers shall by law be paid for like services.

SEC. 13. In case of a contest of election between candidates, at the first general election under this constitution, for judges of the supreme, district or county courts, or district attorneys, the evidence shall be taken in the manner prescribed by territorial law; and the testimony so taken shall be certified to the secretary of state, and said officer, together with the governor and attorney general, shall review the testimony and determine who is entitled to the certificate of election.

SEC. 14. The votes at the first general election under this constitution for the several officers provided for in this constitution who are to be elected at the first election, shall be canvassed in the manner prescribed by the territorial law for canvassing votes for like officers. The votes cast for the judges of the supreme and district courts and district attorneys shall be canvassed by the county canvassing board in the manner prescribed by the territorial law for canvassing the votes for members of the general assembly; and the county clerk shall transmit the abstracts of votes to the secretary of the territory, acting as secretary of state, under the same regulations as are prescribed by law for sending the abstracts of votes for territorial officers; and the aforesaid acting secretary of state, auditor, treasurer, or any two of them, in the presence of the governor, shall proceed to canvass the votes, under the regulations of sections thirty-five and thirty-six of chapter twenty-eight of the revised statutes of Colorado Territory.

SEC. 15. Senators and members of the house of representatives shall be chosen by the qualified electors of the several senatorial and representative districts as established in this constitution, until such districts shall be changed by law, and thereafter by the qualified electors of the several districts as the same shall be established by law.

SEC. 16. The votes cast for representatives in congress at the first election held under this constitution, shall be canvassed and the result determined in the manner provided by the laws of the Territory for the canvass of votes for delegate in congress.

SEC. 17. The provision of the constitution that no bill, except the general appropriation bill, introduced in either house after the first twenty-five days of the session shall become a law, shall not apply to the first session of the general assembly; but no bill, introduced in either house at the first session of the general assembly after the first fifty days thereof, shall become a law.

SEC. 18. A copy of the abstracts of the votes cast at the first general election held under this Constitution, shall by the county clerks of the several counties, be returned to the secretary of the Territory immediately after the canvass of said votes in their several counties; and the secretary, auditor, and treasurer of the Territory, or any two of them, shall, on the twenty-fifth day after the election, meet at the seat of government and proceed to canvass the votes cast for members of the general assembly, and determine the result thereof.

SEC. 19. The general assembly shall, at their first session, immediately after the organization of the two houses, and after the canvass of the votes for officers of the executive department, and before proceeding to other business, provide by act or joint resolution, for the appointment by said general assembly, of electors in the electoral college; and such joint resolution, or the bill for such enactment, may be passed without being printed or referred to any committee, or read on more than one day in either house, and shall take effect immediately after the concurrence of the two houses therein, and the approval of the governor thereto shall not be necessary.

SEC. 20. The general assembly shall provide that after the year eighteen hundred and seventy-six, the electors of the electoral college shall be chosen by direct vote of the people.

SEC. 21. The general assembly shall have power, at their first session, to provide for the payment of the expenses of this convention if any there be then remaining unpaid.

SEC. 22. All recognizances, bail bonds, official bonds, and other obligations or undertakings which have been, or at any time before the admission of the State, shall be made or entered into and expressed to be payable to the people of the Territory of Colorado, shall continue in full force, notwithstanding the change in the form

of government; and any breach thereof, whenever occuring, may, after the admission of the State, be prosecuted in the name of the people of the State.

Done in Convention, at the City of Denver, Colorado, this fourteenth day of March, in the year of our Lord one thousand, eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

In Witness Whereof, We have hereunto subscribed our names.

J. C. WILSON, *President.*

H. P H. BROMWELL,
CASIMIRA BARELA,
GEORGE BOYLES,
W. E. BECK,
BYRON L. CARR,
WM. H. CUSHMAN,
WILLIAM M. CLARK,
A. D. COOPER,
HENRY R. CROSBY,
ROBERT DOUGLAS,
LEWIS C. ELLSWORTH,
CLARENCE P. ELDER,
F. J. EBERT,
WILLARD B. FELTON,
JESUS M^{A} GARCIA,
DANIEL HURD,
JOHN S. HOUGH,
LAFAYETTE HEAD,
WM. H. JAMES,
WM. R. KENNEDY,
WM. LEE,
ALVIN MARSH,
WM. H. MEYER,
S. J. PLUMB,
GEO. E. PEASE,
ROBERT A. QUILLIAN,
LEWIS C. ROCKWELL,
WILBUR F. STONE,
WILLIAM C. STOVER,
HENRY C. THATCHER,
AGAPITO VIGIL,
W. W. WEBSTER,
GEORGE G. WHITE,
EBENEZER T. WELLS,
P. P. WILCOX,
JOHN S. WHEELER,
J. W. WIDDERFIELD,
ABRAM KNOX YOUNT

ATTEST:

W. W. COULSON, *Secretary.*
HERBERT STANLEY, *1st Assistant Secretary.*
H. A. TERPENNING, *2d Assistant Secretary.*

ELECTION ORDINANCE.

In conformity with the requirements of an act of the congress of the United States, entitled "an act to enable the people of Colorado to form a constitution and state government, and for the admission of said State into the Union on an equal footing with the original States," approved March 3d, A. D. 1875, on behalf and by the authority of the people of the Territory of Colorado, this convention assembled in pursuance of said enabling act, at the city of Denver, the capital of said Territory, on the twentieth day of December, A. D. 1875, does ordain and declare:

First—That an election shall be held throughout the Territory of Colorado, on the first day of July, in the year eighteen hundred and seventy-six, for the ratification or rejection of the Constitution framed and adopted by this convention.

Second—At said election the Constitution framed and adopted by this convention, shall be submitted to the people of the Territory for their ratification or rejection, and all persons who are then qualified electors under the laws of the Territory, shall be qualified to vote upon the ratification or rejection thereof.

Third—Said election shall be held at the several places in the several wards and precincts throughout the Territory, appointed for the holding of elections under the laws of the Territory, and shall be conducted in the manner prescribed by the laws of said Territory regulating elections. The judges of elections, appointed under the laws of the Territory, in each of said wards and precincts, shall act as the judges of said election, and vacancies in the board of judges of any ward or precinct shall be filled, and clerks of election shall be appointed, in the manner prescribed by said laws; *provided*, that no law requiring a registration of voters shall apply to said election, (and any qualified elector may at said election vote at any ward or precinct in the Territory.) Whenever any person shall present himself to vote at said election, and either of the judges shall suspect

that such person is not a qualified elector of the Territory, or if his vote shall be challenged by any elector who has previously voted at the said election, then before the ballot of such person shall be received, he shall take and subscribe the following oath or affirmation: "You do solemnly swear (or affirm) that you are a resident of———— county, in the Territory of Colorado; that you have resided in this Territory six months immediately preceding this election; that you have to the best of your knowledge and belief attained the age of twenty-one years, and have not voted at this election."

Fourth—Each elector voting at said election shall deposit in the ballot-box a ticket, whereon shall be printed or written the words "For the Constitution," or the words, "Against the Constitution," or other equivalent words.

Fifth—The acting governor of the Territory shall, within thirty days after the adjournment of this convention, issue his proclamation for said election, to be held in conformity with the provisions of this ordinance; and the secretary of the Territory shall, on or before the fifteenth day of May, A. D. 1876, make out and transmit to the sheriff of each county a notice in writing of said election together with a copy of this ordinance.

Sixth—The votes cast at said election for the adoption or rejection of the Constitution, shall be canvassed in the manner prescribed by the laws of the Territory of Colorado for canvassing the votes of general elections; and the returns of said election shall be made to the acting governor of the Territory, who with the chief justice and the United States attorney of said Territory, or any two of them, shall canvass the same, and if a majority of the legal votes cast shall be for the Constitution, the acting governor shall certify the same to the President of the United States, together with a copy of said Constitution and the ordinances adopted by this convention.

ORDINANCE.

In conformity with the requirements of an act of the congress of the United States, entitled "An act to enable the people of Colorado to form a Constitututution and State government, and for the admission of said State into the Union on an equal footing with the original states," approved March 3d, A. D. 1875, on behalf and by the authority of the people of the Territory of Colorado, this Convention assembled in pursuance of said enabling act, at the city of Denver, the

capital of said Territory, on the twentieth day of December, A. D. 1875, does ordain and declare:

First—That perfect toleration of religious sentiment shall be secured and no inhabitant of said State shall ever be molested in person or property, on account of his or her mode of religious worship.

Second—That the people inhabiting the Territory of Colorado, by their representatives in said Convention assembled, do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposal of the United States; that the lands belonging to cittzens of the United States residing without said State, shall never be taxed higher than the lands belonging to residents thereof; and that no taxes shall be imposed by the State on lands or property therein belonging to, or which may hereafter be purchased by the United States.

Third—That this ordinance shall be irrevocable without the consent of the United States and the people of the State of Colorado.

BE IT REMEMBERED, That in the convention of the representatives of the people of the Territory of Colorado, chosen in pursuance of the act of congress of the United States, entitled, "An act to enable the people of Colorado to form a constitution and State government, and for the admission of the said State into the Union on an equal footing with the original States," approved March 3d, A. D. 1875, and assembled at the seat of government of said Territory, in pursuance of said act, on the twentieth day of December, A. D. 1875, after the organization of said convention, and before proceeding to other business, it was, on the twenty-second day of December, A. D. 1875,

Resolved, That in pursuance of the enabling act, and in behalf of the people of Colorado, we, in convention assembled, do adopt the constitution of the United States.

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these Presents shall come, Greeting:

I certify, that hereto annexed is a true copy of a proclamation made by the president of the United States on the first of August, 1876,

declaring that the admission of the State of Colorado into the Union is now complete.

SEAL

In Testimony Whereof, I, JOHN L. CADWALADER, acting secretary of state of the United States, have hereunto subscribed my name and caused the seal of the department of state to be affixed. Done at the city of Washington, this twenty-fourth day of August, A. D. 1876, and of the independence of the United States of America the one hundred and first.

JOHN L. CADWALADER.

By the President of the United States of America.

A PROCLAMATION.

WHEREAS, The congress of the United States did, by an act approved on the third day of March, one thousand eight hundred and seventy-five, authorize the inhabitants of the Territory of Colorado to form for themselves out of said Territory, a State government, with the name of the State of Colorado, and for the admission of such State into the Union, on an equal footing with the original States, upon certain conditions in said act specified. And,

WHEREAS, It was provided by said act of Congress that the convention elected by the people of said Territory to frame a State constitution should, when assembled for that purpose and after organization, declare on behalf of the people that they adopt the constitution of the United States, and should also provide by an ordinance, irrevocable without the consent of the United States and the people of said State, that perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship, and that the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States. And,

WHEREAS, It was further provided by said act that the constitution thus formed for the people of the Territory of Colorado should, by an ordinance of the convention forming the same, be submitted to the peo-

ple of said Territory for ratification or rejection at an election to be held in the month of July, eighteen hundred and seventy-six, at which election the lawful voters of said new State should vote directly for or against the proposed constitution, and the returns of said election should be made to the acting governor of the Territory who, with the chief justice and United States attorney of said Territory, or any two of them, should canvass the same, and if a majority of legal votes should be cast for said constitution in said proposed State, the said acting governor should certify the same to the president of the United States, together with a copy of said constitution and ordinances; whereupon it should be the duty of the president of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States without any further action whatever on the part of congress. And,

WHEREAS, It has been certified to me by the acting governor of said Territory of Colorado, that within the time prescribed by said act of congress, a constitution for said proposed State has been adopted, and the same ratified by a majority of the legal voters of said proposed new State, in accordance with the conditions prescribed by said act of congress. And,

WHEREAS, A duly authenticated copy of said constitution and of the declaration and ordinance required by said act has been received by me.

Now, Therefore, I, ULYSSES S. GRANT, president of the United States of America, do, in accordance with the provisions of the act of congress aforesaid, declare and proclaim the fact that the fundamental conditions imposed by congress on the State of Colorado to entitle that State to admission to the Union have been ratified and accepted, and that the admission of the said State into the Union is now complete.

SEAL

In Testimony Whereof, I have hereunto set my hand and have caused the seal of the United States to be affixed. Done at the city of Washington this first day of August, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the United States of America the one hundred and first.

U. S. GRANT.

By the President.

HAMILTON FISH,

Secretary of State.

GENERAL LAWS

OF THE

STATE OF COLORADO.

CHAPTER I.

ADOPTION OF CHILDREN.

AN ACT CONCERNING THE ADOPTION OF CHILDREN.

[Session Laws, 1876.]

1. SECTION 1. If any person in this state shall desire to adopt any child or children, as his or her heir, it shall be lawful for such person to do the same by deed, which deed shall be executed, acknowledged and recorded in the county of the residence of the person executing the same, as in the case of conveyance of real estate.

Lawful to adopt child by Deed, to be recorded.

2. SEC. 2. A married woman, by joining in the deed of adoption with her husband, shall, with her husband, be capable of adopting any child or children.

Married woman capable of adopting.

3. SEC. 3. From the time of filing the deed with the recorder, the child or children adopted shall have the same right against the person or persons executing the same for support and maintenance, and for proper and humane treatment, as a child has by law against lawful parents; and such adopted child shall have in all respects, and enjoy all such other rights and privileges, including the rights of inheritance, as against the persons executing the deed of adoption, as a child by law has against lawful parents.

Rights of children against persons adopting.

Rights of inheritance.

4. SEC. 4. In all cases contemplated by the provisions of this act, the district or county court of the proper county shall have power, in its discretion, to change the name of any child adopted, as herein provided, and by order to that effect, recorded in the record of its proceedings, and this may be done upon a petition filed for that purpose by the person or persons adopting such child.

Courts shall have power to change name of child adopted, upon petition.

Consent of parent or guardian to be endorsed on deed.

5. SEC. 5. The consent of the parents or guardian of such child shall, in all cases, be necessary, and the consent of such, or of the surviving parent, shall be endorsed upon the deed mentioned in the first section of this act.

CHAPTER II.

ADVERTISEMENTS.

[Revised Statutes, 1868.]

Publishers' certificate evidence of publication of legal advertisement.

6. SECTION 1. When any notice or advertisement shall be required, by law, or the order of any court, to be published in any newspaper, the certificate of the printer or publisher, with a printed copy of such notice or advertisement annexed, stating the number of times which the same shall have been published, and the dates of the first and last paper containing the same, shall be sufficient evidence of the publication therein set forth.

Certificate and notice part of record.

7. SEC. 2. Such notices and certificates of the publication thereof, when so certified, shall be a part of the records of the court.

CHAPTER III.

AGRICULTURAL COLLEGE.

AN ACT TO PROVIDE A FUND FOR THE BUILDING AND MAINTENANCE OF THE AGRICULTURAL COLLEGE OF COLORADO.

Be it enacted by the General Assembly of the State of Colorado:

Tax of one-tenth mill on each dollar of taxable property shall be levied, assessed and collected.

8. SECTION 1. That there shall be levied and assessed upon all taxable property, both real and personal, within this state, in each year, the following tax, for the building and support of the agricultural college: One-tenth of one mill on each and every dollar, to be known as the agricultural college tax, and to be assessed and collected in the same manner, and at the same time, as is now or may be prescribed by law for the assessment and collection of state revenues.

9. SEC. 2. It shall be the duty of every county treas-

urer in this state to provide suitable books, in which shall be entered an account of all taxes collected in pursuance of this act; he shall also enter in said book an account of all money transmitted to the state treasurer on account of said fund, as hereinafter provided. County treasurer to keep suitable books.

10. SEC. 3. The fund so created shall be applied exclusively for the building and support of the agricultural college of this state. How fund shall be applied.

11. SEC. 4. It shall be the duty of the county treasurers in the several counties, to preserve the agricultural college fund, as provided by this act, a separate fund, and to transmit the same monthly to the treasurer of the state, who shall keep the same as an agricultural college fund, to be at the disposal of the state board of agriculture, as provided by this act. County treasurer shall transmit monthly to state treasurer.

12. SEC. 5. Whenever there shall be any money in the hands of the state treasurer to the credit of the agricultural college fund, deemed sufficient by the state board of agriculture, to commence the erection of an agricultural college, the auditor of state is hereby authorized to draw his warrant upon the treasurer of the state, in favor of the treasurer of said state board of agriculture, in such sums as said board shall deem necessary to carry on the erection or running expenses of said college; *provided*, that nothing herein shall be construed as authorizing or empowering said board to create any indebtedness, in any year, beyond the tax so levied in that year for that purpose. When erection of agricultural college shall be commenced. Auditor to draw warrant for sums necessary for erection or expenses. Yearly indebtedness not to exceed tax.

13. SEC. 6. The auditor of state shall draw his warrant upon the fund herein provided for, upon bills approved by the president of the state board of agriculture, countersigned by the secretary of said board, to defray the lawful expenses incurred in building and supporting the agricultural college. By whom bills approved and countersigned.

14. SEC. 7. This act shall not take effect unless the fee simple title to the real estate known as the agricultural college of Colorado shall, within ninety (90) days from the passage of this act, be vested in said state board of agriculture free of any condition whatever. When the said title shall be so vested, it shall be the duty of the attorney general to certify such fact, in writing, to the state auditor, and the Titles to real estate to be vested in state board of agriculture within ninety days. Attorney general shall certify to state auditor and auditor to county clerks.

state auditor shall notify the county clerks of the several counties of this state of the same, in order that the tax herein provided may be properly levied and assessed.

Approved, March 9, 1877.

CHAPTER IV.

ALIENS.

[Revised Statutes, Chap. III.]

Aliens to take, hold, inherit, transmit and devise lands, and to have the same remedies in relation thereto as citizens. [Amendment, 1874.]

15. All aliens may take, by deed, will or otherwise, lands and tenements and any interest therein, and alienate, sell, assign and transmit the same to their heirs, or any other persons, whether such heirs or other persons be citizens of the United States or not, and upon the decease of any alien having title to, or interest in, any lands or tenements, such lands and tenements shall pass and descend in the same manner as if such alien were a citizen of the United States; and it shall be no objection to any person having an interest in such estate, that they are not citizens of the United States; but all such persons shall have the same rights and remedies, and in all things be placed upon the same footing as natural born citizens of the United States. The personal estate of an alien, dying intestate, who at the time of his death shall reside in this state, shall be distributed in the same manner as the estate of natural born citizens; and all persons shall be entitled to their proper distributive shares of such estate under the laws of this state, whether they are aliens or not.

Personal estate of aliens to be distributed in the same manner as that of citizens.

CHAPTER V.

ATTORNEYS AT LAW.

[Revised Statutes, Chapter VII.]

No person to practice as an attorney in courts of record without license.

16. SECTION 1. No person shall be permitted to practice as an attorney or counselor at law, or to commence, conduct, or defend any action, suit or plaint in which he is not a party concerned, in any court of record within this

state, either by using or subscribing his own name, or the name of any other person, without having previously obtained a license for that purpose from some two of the justices of the supreme court, which license shall constitute the person receiving the same an attorney and counselor at law, and shall authorize him to appear in all the courts of record within this state, and there to practice as an attorney and counselor at law, according to the laws and customs thereof, for and during his good behavior in said practice, and to demand and receive all such fees as are or hereafter may be established for any services which he shall or may render as an attorney and counselor at law in this state.

Qualification of applicants for admission.

17. SEC. 2. No person shall be entitled to receive a license as aforesaid until he shall have obtained a certificate from the court of some county of his good moral character, also a certificate from one or more reputable counselors at law, that he has been engaged in the study of the law for two successive years prior to the making of such application.

Supreme court to appoint committees for examination of applicants for admission.

18. SEC. 3. It shall be the duty of the supreme court to appoint a standing committee of three attorneys at law for each judicial district of this state, whose duty it shall be to examine all applicants, for license as aforesaid; and if upon such examination a majority of said committee shall deem the applicant qualified to practice as an attorney and counselor at law in the courts of this state, they shall sign a certificate to that effect, and transmit the same to the clerk of the supreme court.

Clerk supreme court to keep roll of attorneys.

19. SEC. 4. It shall be the duty of the clerk of the supreme court to make and keep a roll or record, stating at the head or commencement thereof, that the persons whose names are therein written have been regularly licensed, and admitted to practice as attorneys and counselors at law within this state, and that they have duly taken the oath to support the constitution of the United States, and the constitution of this state, and also the oath of office as prescribed by law, which shall be certified and endorsed on said license.

20. SEC. 5. And no person whose name is not sub-

No person to practice as attorney whose name does not appear on rolls.

scribed to or written on said roll, with the day and year when the same was subscribed thereto, or written thereon, shall be suffered or admitted to practice as an attorney or counselor at law within this state, under the penalty hereinafter mentioned, anything in this chapter to the contrary notwithstanding; and the justices of the supreme court, in open court, shall have power, at their discretion, to strike the name of any attorney or counsellor at law from the roll, for malconduct in his office.

Supreme court may strike attorney from roll for cause.

Attorney failing to pay over or deliver to client money or property collected on claim, may be stricken from roll.

21. SEC. 6. In all cases where an attorney of any court of this state, or solicitor in chancery, shall have received, or may hereafter receive in his said office of attorney or solicitor, in the course of collection or settlement of any claim left with him for collection or settlement, any money or other property, belonging to any client, and shall, upon demand made and a tender of his reasonable fees and expenses, refuse or neglect to pay over or deliver the same to the said client, or to any person duly authorized to receive the same, it shall be lawful for any person interested to apply to the supreme court of this state, for a rule upon the said attorney or solicitor, to show cause, at a time to be fixed by the said court, why the name of said attorney or solicitor should not be stricken from the roll, a copy of which rule shall be duly served upon said attorney or solicitor at least ten days previous to the day upon which said rule shall be made returnable; and if upon the return of said rule it shall be made to appear to the said court that such attorney or solicitor has improperly neglected or refused to pay over or deliver said money or property, so demanded as aforesaid, it shall be the duty of the said court to direct that the name of the said attorney or solicitor be stricken from the roll of attorneys in said court.

Notice to be given.

Proceedings in such case.

Notice of charges shall be given, and time allowed to prepare defense.

22. SEC. 7. Every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be heard in his own defense, and allowed reasonable time to collect and prepare testimony for his justification; and any attorney whose name shall at any time

be stricken from the roll, by order of the court, in the manner aforesaid, shall be considered as though his name had never been written thereon, until such time as the said justice, in open court, shall authorize him to sign or subscribe the same.

Attorneys and officers of courts, liable to arrest and prosecution in same manner as other persons.

23. SEC. 8. All attorneys and counselors at law, judges, clerks and sheriffs, and all other officers of the several courts within this state shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may in all respects be prosecuted and proceeded against in the same courts and in the same manner as other persons are, any law, usage or custom to the contrary notwithstanding; *provided, nevertheless*, said judges, counselors, attorneys, clerks, sheriffs, and other officers of said courts, shall be privileged from arrest while attending courts, and while going to and returning from court.

Privileged from arrest while going to, returning from or in attendance at courts.

Certain officials not permitted to practice in certain courts.

24. SEC. 9. No person who holds a commission as judge of any district court, shall be permitted to practice as attorney or counselor at law in the court in which he presides as judge of the district court, nor shall any coroner, sheriff, deputy sheriff, jailer or constable, be permitted to practice as aforesaid in the county in which he is commissioned or appointed, nor shall any clerk of the supreme court or district court be permitted to practice as an attorney or counselor at law in the court in which he is clerk; and no person shall be permitted to enter his name on the roll or record to be kept as aforesaid by the clerk of the supreme court, or do any official act appertaining to the office of an attorney or counselor at law, until he hath taken an oath to support the constitution of the United States, and the constitution of this state; and the person administering such oath shall certify the same on the license, which certificate shall be a sufficient voucher to the clerk of the supreme court to enter or insert, or permit to be entered or inserted on the roll of attorneys and counselors at law the name of the person to whom such certificate is made.

Attorney to take oath, to be certified on license, before name shall be entered on roll.

Oath of office.

25. SEC. 10. The following oath of office shall be administered to every attorney and counselor at law before they subscribe the respective rolls, to wit: I swear (or affirm) that I will, in all things, faithfully execute the duties

of an attorney and counselor at law to the best of my understanding and abilities.

[Amendment, 1874.] Attorneys from other states may be admitted without examination.

26. SEC. 11. That any person producing a license from any court of record, or a duly authenticated copy of the record of any court of record in the United States, showing that he has been regularly admitted an attorney at law in any court of record in the United States; and it appearing to the satisfaction of the judges of the supreme court, or a majority thereof, that he is a man of good moral character, he shall be licensed and permitted to practice in all the courts of the state without examination. Persons producing such evidence of their admission as attorneys at law in other states or territories may make application to the judges of the supreme court in vacation, and two or more of the said judges shall issue a license to such person in the same manner as if such application was made to the supreme court.

How admitted in vacation.

Fees collected by unlicensed persons may be recovered back.

27. SEC. 12. If any person, not licensed as aforesaid, shall receive any money or any species of property as a fee or compensation for services rendered, or to be rendered by him as an attorney or counselor at law within this state, all money so received by him shall be considered as money received to the use of the person paying the same, and may be recovered back, with costs of suit, by an action for money had and received; and all property conveyed or delivered, for the purpose aforesaid, or the value thereof, may be recovered back, with costs of suit, by the person conveying or delivering the same, by action of detinue or trover and conversion, and the person receiving such money or property, shall forfeit threefold the amount or value thereof, to be recovered, with costs of suit, before any magistrate, if within a magistrate's jurisdiction, but if not, in any court of record within the state, by action of debt *qui tam*, the one-half to the use of the person who shall sue for and recover the same, and the other half to the use of the county in which such suit shall be brought; and if any person shall sign, or cause to be signed, the name of any attorney, or either of the justices of the supreme court, to any certificate or license, provided for in this chapter, with intent to deceive, such person shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

Penalty for receiving fee by unlicensed person.

False signing of certificate or license, forgery.

28. SEC. 13. Plaintiffs shall have the liberty of prosecuting, and defendants shall have the privilege of defending, in their proper persons, and nothing herein contained shall be so construed as to effect any persons heretofore admitted to the degree of attorney or counselor at law in this state, so as to subject them to further examination, or make it necessary for them to renew their license.

Parties in action may appear in person.

Attorneys heretofore admitted not subjec to examination or renewal of license.

29. SEC. 14. Whenever any counselor at law residing in any of the adjacent states or territories, may have any business in any of the courts of this state, he may be admitted, on motion, for the purpose of transacting such business, and none other.

Attorneys from adjacent states may be admitted specially.

30. SEC. 15. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons, having in custody any person committed, imprisoned, or restrained of his liberty, for any alleged cause whatever, shall, except in cases of imminent danger of escape, admit any practicing attorney at law in this state whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody; any officer violating this provision shall forfeit and pay one hundred dollars to the person aggrieved, to be recovered by action of debt, in any court of competent jurisdiction.

Officers having persons in custody shall permit attorneys to have private consultation with prisoner.

Penalty for violating this provision.

31. SEC. 16. No attorney or counselor at law, or solicitor in chancery, shall become surety in any bond or recognizance of any sheriff, constable, or coroner, or in any bond or recognizance for the appearance of any person or persons charged with any public offense; or upon any bond or recognizance authorized by any statute, to be taken for the payment of any sum of money into court, in default of the principal, without the consent of a judge of the district first had, approving said surety.

Attorney shall not become security on official bond of sheriff etc., or in recognizance without consent of judge.

32. SEC. 17. All attorneys and counselors at law shall have a lien upon any money or property in their hands, or upon any judgment they may have attained, belonging to any client, for any fee or balance of fees due, or any professional services rendered by them in any court of this state, when said lien may be enforced by the proper civil action.

Shall have lien on money collected or judgment recovered for their fees.

License not required to practice in county court in matters of probate.

33. SEC. 18. Nothing in this chapter shall be construed so as to prevent any male citizen over the age of twenty-one years, of good moral character, from practicing as an attorney in the probate courts of this state, without having obtained a license as an attorney, as provided herein.

CHAPTER VI.

AUCTIONS.

[Revised Statutes, Chap. VIII.]

Auctioneer licensed to sell stock shall keep register describing every animal offered for sale.

34. SECTION 1. Any person who may be licensed in this state to keep an auction, where horses, mules or cattle are sold at action, shall open a book called a "stock register," in which he shall describe minutely every animal he shall so offer for sale.

What shall be entered in register.

35. SEC. 2. In such register shall be recorded the person's name who brings forward such animal for sale, and whether or not he is the owner of the same, and if not the owner, the name of the owner, with his residence; also, the color, brand or marks, size and age, as near as may be, of the animal so offered for sale.

Fee for registration of stock.

36. SEC. 3. The keeper of such auction shall be entitled to charge and receive for the registering of each animal so entered in his register, before he shall offer the same for sale, the sum of twenty-five cents, and all "stock registers" shall be open for inspection and reference to any person who may wish to examine the same, and shall be evidence in any court where the trial of the right of property may be had.

Book to be open for inspection and shall be evidence in courts.

37. SEC. 4. Any person who shall hereafter offer for sale at auction, any animal named in section one of this chapter, without first having complied with the requirements of this chapter, shall, upon conviction thereof, before a court of proper jurisdiction, be fined in the sum of twenty-five dollars, to be collected as other fines, and paid into the county treasury for the use of the county.

Penalty for violation of section one.

38. SEC. 5. All auctioneers, commission merchants, and other persons who shall keep a place or stand for publicly vending horses, mules and horned cattle, or either

of them, shall, in a book kept for the purpose, keep a true and faithful record of all the animals purchased or sold by them, or under their control, which record shall contain a brief description of the animal, including its age, value and marks, brands and date of purchase and sale, and the name and residence of the seller and purchaser, in each case.

Persons keeping stand for public sale of stock shall keep record of sales, description of animal and names of seller or purchaser.

39. SEC. 6. The record provided in section one of this act, shall be open to the inspection of all persons during the ordinary business hours of the day.

Record shall be open to inspection.

40. SEC. 7. Any person offending against the provisions of this act, shall be fined in a sum not less than ten nor more than one hundred dollars, in the discretion of the court, to be recovered in any court of competent jurisdiction, with costs of suit.

Penalty for violation of this act.

41. SEC. 8. All fines recovered under the provisions of this act, shall be paid into the county treasury of the proper county, and appeals shall be allowed to the district court as in civil cases.

Penalties recovered, to be paid into county treasury.

Appeals allowed.

CHAPTER VII.

BOARD OF AGRICULTURE.

AN ACT TO ESTABLISH A STATE BOARD OF AGRICULTURE AND TO DEFINE ITS DUTIES.

Be it enacted by the General Assembly of the State of Colorado:

42. SECTION 1. That a board is hereby constituted and established, which shall be known by the name and style of "the state board of agriculture." It shall consist of eight members, besides the governor of the state and the president of the state agricultural college, who shall be *ex-officio* members of the board. The governor, by and with the consent of the senate, on or before the third Wednesday of January of each biennial session of the general assembly, shall appoint two members of the board to fill the vacancies that shall next occur, which vacancies shall be so filled that at least one-half of the appointed members of the board shall be practical farmers.

Who shall constitute Board.

Governor to fill vacancies by appointment.

Shall be body corporate.

43. SEC. 2. The state board of agriculture shall be a body corporate, capable in law of suing and being sued; of taking, holding, and selling personal property and real estate; of contracting and being contracted with; of having and using a corporate seal; and of causing to be done all things necessary to carry out the provisions of this act.

Majority of members may fill vacancies and shall be governed.

44. SEC. 3. Any vacancy in the said board, caused by death, resignation, or removal from the state, may be filled by a majority of the members. A majority shall be a quorum for the transaction of business.

Members shall receive no compensation except expenses.

The members of the board shall receive no per diem compensation for their services, but shall be paid their traveling and other necessary expenses while employed on the business of the board.

When and where meetings of board to be held.

45. SEC. 4. They shall meet at the state agricultural college on the last Wednesday of each year, until such time as the board shall determine to commence the erection of suitable college buildings; and thereafter they shall meet quarterly, viz: on the last Wednesday of February, May, August, and November of each year, and may meet at such other times and places as they may determine. *Provided*, That their first meeting in the year eighteen hundred and seventy-seven shall be at such time as the governor shall designate.

When officers shall be chosen.

46. SEC. 5. At their first meeting and biennially thereafter, the board shall choose from their number a president and secretary, who shall hold their office for two years from the last day of February, or until their successors are chosen.

State treasurer to be treasurer of Board.

The state treasurer shall be *ex officio* treasurer of the board.

Trustees of agricultural college shall convey title to real estate and transfer personal property held by them in trust, to state board of agriculture.

47. SEC. 6. Upon the organization of the state board of agriculture, the trustees of the agricultural college shall convey by deed to the said state board of agriculture and their successors in trust for the agricultural college, title to all real estate which the said trustees now hold in trust for the said college, and shall transfer to the state board of agriculture all personal property, consisting of books, papers, credits or other property, of whatever nature, which they now hold in trust for, or belonging to said college, whereupon the offices and duties of said trustees shall cease and determine; and in default of such transfer within

When office and duties of trustees to cease.

This act of no effect in default of such transfer within ninety days.

ninety (90) days after said organization this act shall cease to have any force or effect.

Disposition of moneys appropriated.

48. SEC. 7. The board shall direct the disposition of any moneys appropriated to the state agricultural college.

Duties of secretary of state board of agriculture.

49. SEC. 8. The secretary of the board shall keep his office at such place as the board shall direct. It shall be his duty to keep a record of the transactions of the state board of agriculture, and of the state agricultural college and farms, which shall be open at all times to the inspection of any citizen of the state. He shall also have the custody of all books, papers, documents, and other property which may be deposited in his office, including specimens of the vegetable and animal kingdoms of the state or counties; also, keep and file all reports which may be made from time to time by the different agricultural and horticultural societies, and all correspondence of the office from other persons and societies appertaining to the general business of husbandry; address circulars to societies, and the best practical farmers in the state and elsewhere, with the view of eliciting information upon the newest and best mode of irrigation, and the culture of those products, vegetables, trees, etc., adapted to the soil and climate of this state; also on all subjects connected with field culture, horticulture, stock raising, and the dairy. He shall encourage the formation of agricultural societies throughout the state, and purchase, receive, and distribute such rare and valuable seeds, plants, shrubbery and trees, as it may be in his power to procure from the general government and such other sources, as may be adapted to our climate and soils. He shall also encourage the importation of improved breeds of horses, cattle, sheep, hogs and other live stock, and the invention and improvement of labor-saving implements of husbandry, and diffuse information in relation to the same. He shall encourage such domestic industry and household arts as are calculated to promote the general thrift, wealth and resources of the state. To effect these objects he shall correspond with the patent office at Washington, and representatives of our national government abroad, and if possible procure valuable contributions of agriculture from those sources. He shall aid as far as pos-

sible, in obtaining contributions to the museums and the library of the state agricultural college, and thus aid in the promotion of agricultural science and literature.

In what manner seeds, plants etc. shall be distributed.

50. SEC. 9. The seeds, plants, trees and shrubbery received by the secretary, and not needed by the college, shall be, so far as possible, distributed equally throughout the state, and placed in the hands of those farmers and others who will agree to cultivate them properly, and return to the secretary's office a reasonable proportion of the products thereof, with a full statement of the mode of cultivation, and such other information as may be necessary to ascertain their value for cultivation in the state.

Information may be published.

Information in regard to agriculture may be published by him, from time to time, in the newspapers of the state; *provided*, it does not involve any expense to the state.

Secretary shall report to governor within five days after close of fiscal year.

51. SEC. 10. The secretary shall report to the governor within five days after the close of each fiscal year, which report shall embrace all such statements, accounts, statistics, prize essays, and other information relative to agriculture in general, proceedings of the state board of agriculture, of the state agricultural college and farm.

Compensation of Secretary.

52. SEC. 11. The secretary shall receive as a compensation for his services, a salary of one hundred dollars per annum, to be paid quarterly from the state treasury, in the same manner as is provided by law for the payment of the salaries of state officers.

Annual appropriation for contingent expenses purchase of seeds etc.

53. SEC. 12. The sum of one hundred dollars per annum, until otherwise provided by law, or so much thereof as may be esteemed necessary by the state board of agriculture, shall be applied to meet the expenses which may be incurred in the purchase and transportation of seeds, postage, and other contingent expenses of the office of the secretary, and also necessary to pay the expense of the board in attendance upon their duties.

State agricultural college.

54. SEC. 13. As soon as suitable buildings can be erected and furnished, a school shall be established, and shall be known by the name and style of "The State Agricultural College." The design of the institution is to

When to be established and design of the institution.

afford thorough instruction in agriculture, and the natural sciences connected therewith. To effect that object most

completely, the institution shall combine physical with intellectual education, and shall be a high seminary of learning, in which the graduates of the common school, of both sexes, can commence, pursue and finish a course of study, terminating in thorough theoretical and practical instruction in those sciences and arts which bear directly upon agriculture and kindred industrial pursuits.

Qualifications of students.

55. SEC. 14. No student shall be admitted to the institution who is not fifteen years of age, and who does not pass a satisfactory examination in arithmetic, geography, grammar, reading, spelling, and penmanship.

Board shall make programme of institution annually.

56. SEC. 15. The board annually shall make a programme of theoretical and practical instruction.

Duration of full course of study. Courses of lectures may be instituted.

57. SEC. 16. A full course of study in the institution shall embrace not less than four years. The state board of agriculture may institute winter courses of lectures for others than students of the institution, under necessary rules and regulations.

Academical year to be divided into terms.

58. SEC. 17. The academical year shall consist of not less than nine calendar months. This academical year may be divided into such terms by the state board of agriculture, as in their judgment will best secure the objects for which the college was founded. The board may, at any time, temporarily suspend the college in case of fire, the prevalence of fatal diseases, or other unforseen calamity.

Temporary suspension of college.

Daily labor on farm.

59. SEC. 18. Three hours of each day shall be devoted by every student of the college to labor on the farm, and no person shall be exempt except for physical disability. By a vote of the board of agriculture, at such sessions and in such exigencies as demand it, the hours of labor may be increased to four hours or diminished to two hours.

Hours of labor may be increased or diminished by board.

Fee for tuition discretionary with board.

60. SEC. 19. The state board of agriculture shall be vested with discretion to charge tuition or not as they may deem most conducive to the interests of the institution, unless acts of the general assembly making appropriations for its support shall otherwise direct. The board may make discrimination in regard to tuition, between students from this state and from other states. One-third of the tuition for the academic term shall be paid in advance, and shall be forfeited in case the student abandons the institution.

Discrimination between students allowed.

Forfeiture in case student abandons institution.

Powers of state board of agriculture.

61. SEC. 20. The state board of agriculture shall have the general control and supervision of the state agricultural college, the farm pertaining thereto, and lands which may be vested in the college by state legislation; of all appropriations made by the state for the support of the same. The board shall have plenary power to adopt all such ordinances, by-laws and regulations, not in conflict with the law, as they may deem necessary to secure the successful operation of the college and promote the designed objects.

Before first term of college, board shall choose president of college and professors, tutors, etc

In case of vacancy board shall designate president pro tem.

62. SEC. 21. It shall be the duty of the state board of agriculture to choose a president of the state agricultural college before the first academic term of the institution; they shall then proceed to choose such professors, tutors and employés as the necessities of the institution demand. In case of vacancy in the office of president, or in case a suitable man cannot be selected, the president of the state board of agriculture, or such member of the board as shall be designated by them, shall be president *pro tem.* of the college, who shall receive such compensation for his services as the board shall determine.

Board to fix salaries and supply vacancies.

63. SEC. 22. The board shall fix the salaries of the president, professors, and other employés of the college, and prescribe their respective duties. The board may remove the president or subordinate officers, and supply all vacancies.

Shall provide books to be used and confer degrees.

64. SEC. 23. The board shall prescribe, with the advice of the faculty, the books to be used in the institution, and also to confer, for similar or equal attainments, similar degrees or testimonials to those conferred by the state university at Boulder.

How faculty constituted.

65. SEC. 24. The president, professors, farm managers and tutors, shall constitute the faculty of the state agricultural college. The president of the college shall be the president of the faculty. The secretary of the state board of agriculture shall be a member and secretary of the faculty.

Faculty shall prescribe all necessary rules and regulations.

66. SEC. 25. The faculty shall pass all needful rules and regulations necessary to the government and discipline of the college; regulate the routine of labor, study, meals, and the duties and exercises, and all such rules and

regulations as are necessary to the preservation of morals, decorum and health.

Shall have charge of library etc.

67. SEC. 26. The faculty shall have charge of the laboratories, library, and museums of the institution.

Faculty shall make report annually to state board of agriculture.

68. SEC. 27. The faculty shall make an annual report by the first Wednesday of December of each year, to the state board of agriculture, signed by the president and secretary, containing such information and recommendations as the welfare of the institution in their opinion demands. Any members of the faculty may make a minority report, if they disagree with the conclusions of the majority, which the faculty shall communicate to the board. No communications at any other time from members of the faculty, shall be entertained by the board, unless they have been submitted to a meeting of the faculty and sanctioned by the majority.

Duties of president of college.

69. SEC. 28. The president shall be chief executive officer of the state agricultural college, and it shall be his duty to see that the rules and regulations of the state board of agriculture, and the rules and regulations of the faculty be observed and executed.

President may remove subordinate officers during recess of board.

70. SEC. 29. The subordinate officers and employés not members of the faculty, shall be under the direction of the president, and in the recess of the board, removable at his discretion; and he may supply vacancies that may be thus or otherwise created. His action in these respects shall be submitted to the approval of the state board of agriculture at their next meeting.

Such action to be submitted to board for approval.

When superintendent of farm may be appointed, and his duties.

71. SEC. 30. The president may or may not perform the duties of a professor, as the state board of agriculture shall determine. If he performs the duties of a professor, or in case the duties of the president are exercised by a president *pro tem.*, a superintendent of the farm may be appointed, who shall have the general superintendence of the business pertaining to the farm, the land and other property of the institution, and who shall be a member of the faculty.

Rate of wages allowed students to be fixed by committee.

72. SEC. 31. The president and secretary, together with the superintendent of the farm, if there be one, and in case there is not one, then one of the professors to be

elected by the faculty, shall constitute a committee to fix the rate of wages allowed to students, and rate of board. In assessing the board, it shall be so estimated that no profit shall be saved to the institution, and as near as possible at the actual cost. The rates of wages allowed, and rate of charge for board, shall, if practicable, be submitted to the state board of agriculture before they take effect.

Current expenses of state board of agriculture and college to be paid by warrants drawn by auditor.

73. SEC. 32. For the current expenses of the state board of agriculture and the state agricultural college specified sums shall be set aside by the state treasurer upon an estimate of the state board of agriculture, to be paid out on the warrants of the state auditor; said warrants to be drawn upon certificates of indebtedness issued by the president, and countersigned by the secretary of the state board of agriculture. All moneys due to the institution or received in its behalf, shall be collected and received by the secretary and deposited by him with the state treasurer to be placed to the credit of the state agricultural college. The secretary shall, with the annual report, render a full and complete account of all moneys received and all certificates of indebtedness issued and shall file and preserve all vouchers, receipts, correspondence or other papers pertaining to his office.

Moneys received by secretary of college to be deposited with state treasurer.

Secretary shall report annually an account of moneys received and certificates of indebtedness issued.

Annual report of state board of agriculture may contain.

74. SEC. 33. All agricultural operations on the farm shall be carried on experimentally, and for the instruction of the students, and with a view to the improvement of the science of agriculture in the state of Colorado. To this end the state board of agriculture may cause to be published, as hereafter provided by law, in their annual report:

Fields under cultivation.

First—A statement of the number of fields under cultivation on the college farm; their number as recorded on the farm plat, with the number of acres of arable land in each field; the kinds of crops raised; the number of acres of such kind; and the number of the field on which they were raised.

Preparation of soil, etc.

Second—The manner of preparation of the soil for the various crops, methods of seeding or planting, kind and variety of seed used, the quantity per acre, the manner of cultivation and harvesting.

Irrigation.

Third—The mode of irrigating the crops embracing the

manner of applying the water, the time of day when applied, the number of applications to each crop, with specified results as to its action.

Fourth—The several kinds, and a description of all implements used in the various stages of the different crops, with reports on their utility and adaptation for the purposes used. Implements used.

Fifth—The time and manner of preparation of the soil, sowing, planting, cultivating and harvesting, and a general statement of the weather, and its influence upon the several crops. Influence of weather on crops.

Sixth—The kinds of manures or fertilizers used, and crops and fields or parts of fields to which they were applied, the time and manner of application and the several results. Manures and fertilizers.

Seventh—A detailed and systematic account of the number of days worked, of ten hours each of men and teams, in the production of each separately treated crop; said statement of labor to be in three divisions: First, up to the time the seed is deposited in the ground. Secondly, during irrigation and cultivation. Thirdly, while harvesting and fitting the crop for market. Account of labor

Eighth—A full and accurate statement of the yield per acre, by weight or measure, of all crops raised on the farm, distinguishing between the several kinds of treatment, as to manures used, depth of plowing, times of watering, difference of cultivation, time of harvesting, kind or variety of seed used. Yield per acre.

Ninth—The date of the arrival of the full grown grasshopper, their progress, direction and flight; the amount of damage done to crops; length of stay and time of depositing their eggs; the methods used, if any, to drive off or destroy them; also, the methods used to protect the crops in the spring of the year against the young grasshopper, and the means used to destroy the same. Grasshopper statistics.

75. SEC. 34. The members of the state board of agriculture shall be appointed by the governor by and with the consent of the senate, and the governor shall appoint the first state board of agriculture before the adjournment of the present general assembly. At its first meeting, Governor to appoint members of state board of agriculture.

which the governor of the state is hereby authorized and directed to call at as early a date as practicable, they shall determine by lot their several periods of service; two of whom shall serve for two years, two of whom shall serve for four years, two of whom shall serve for six years, and two of whom shall serve for eight years respectively from the third Wednesday in January, A. D. eighteen hundred and seventy-seven, when they are superceded by appointment in accordance with the provisions of section one of this act, or until their successors are chosen.

Period of service determined by lot.

Two for 2 years, Two for 4 years, Two for 6 years, Two for 8 years.

To date from third Wednesday in January, 1877.

Repeal.

76. SEC. 35. All acts or parts of acts inconsistent with this act are hereby repealed.

Emergency.

77. SEC. 36. An emergency existing by reason of vacancies in the board of trustees of the agricultural college by death of the president, and removal from the state of other members of said board, so that a quorum cannot be convened and the property of said college requires immediate care and protection, therefore this act shall take effect immediately after its passage.

Approved, February 27, 1877.

CHAPTER VIII.

BOARD OF HEALTH.

AN ACT TO ESTABLISH A STATE BOARD OF HEALTH.

[Session Laws, 1876.]

Members shall be appointed by governor, and designated so that terms of two shall expire biennially.

78. SECTION 1. That a board of health is hereby established, which shall be known under the name and style of the state board of health. It shall consist of nine members, as follows: a president, secretary, and seven members, who shall be appointed by the governor; and the members first appointed, with the exception of the secretary, shall be so designated by the governor that the term of office of two shall expire every two years, on the last day of January. Thereafter, the governor, with the consent of the senate, shall biennially appoint two members, to hold their office for six years, ending January thirty-first. Any vacancy in said board may be filled, until the next regular session of the general assembly, by the governor.

Biennially thereafter governor shall appoint two members to hold office for six years.

Vacancies may be filled by governor.

79. SEC. 2. The state board of health shall have general supervision of the interests of health and life of the citizens of this state. They shall especially study the vital statistics of the state, and endeavor to make intelligent and profitable use of the collected records of death and sickness among the people. They shall carefully study the influence of the climate upon disease and health in different localities in the state, for the benefit of the citizens thereof, as well as for the large number of invalids who seek relief in Colorado. They shall make sanitary investigation and inquiries respecting the cause of disease, and especially of epidemics; the causes of mortality; and the effect of localities, employments, conditions, ingesta, habits and circumstances on the health of the people. They shall, when required, or when they deem it best, advise with the officers of the government, or other state boards, in regard to the location, drainage, water supply, disposal of excreta, heating, and ventilation of any public structure or building. They shall, from time to time, recommend standard works on the subject of hygiene for the use of the schools of the state. Powers and duties of board of health.

80. SEC. 3. The board shall meet semi-annually at Denver, and at such other places and times as they deem expedient. A majority shall be a quorum for the transaction of business. Should the office of president or secretary become vacant, by death or otherwise, the board may fill said office from their number at the next regular meeting. Meetings. Quorum.

81. SEC. 4. The secretary shall hold his office so long as he shall faithfully discharge the duties thereof, but may be removed for just cause at a regular meeting of the board, a majority of the members voting therefor. He shall keep his office at Denver; and shall perform the duties prescribed by this act or required by the board. He shall keep a record of the transactions of the board; shall have custody of all books, papers, documents, and other property, belonging to the board which may be deposited in his office; shall, so far as practicable, communicate with other state boards of health, and with local boards of health within the state; he shall keep and file all reports received from such boards, and all correspondence of the office appertaining to Duties of secretary.

the business of the board. He shall, so far as possible, aid in obtaining contributions to the library and museum of the board. He shall prepare blank forms of returns, and such instructions as may be necessary, and forward them to the clerks of the several boards of health throughout the state. He shall collect information, with the assistance of each member of the board, concerning vital statistics, knowledge respecting disease, and all useful information on the subject of hygiene; and, through an annual report, and otherwise, as the board may direct, shall disseminate such information among the people. It shall be his duty to act as correspondent in answering all inquiries made by non-resident physicians and invalids, who are at liberty to call upon him for special information as to the sanative influence of this climate.

Vital statistics of state to be under control of board.

82. SEC. 5. The state board of health shall have the general direction and control of the system of vital statistics of the state, in so far as the editorial work and statistical plans of the same are concerned.

Health physicians, clerks of local boards and physicians of public institutions shall report annually to state board.

83. SEC. 6. It shall be the duty of all health physicians, and also of the clerks of local boards of health of each town, village and city, and the regular physician of each public institution in the state, at least once in each year, to report to the state board of health, their proceedings and such other facts as may be required by said state board.

Information bearing upon public health to be forwarded to state board of health.

84. SEC. 7. In order to afford to the board better advantages for obtaining knowledge important to be incorporated with that collected through special investigation, and from other sources, it shall be the duty of all officers of the state, the physicians of all mining or other incorporated companies, or the president or agent of any company chartered, organized, or transacting business under the laws of this state, so far as is practicable, to forward to the state board of health any information which they possess bearing upon public health which may be requested by said board for the purpose of enabling it better to perform its duties of collecting and distributing useful knowledge on the subject.

AN ACT CONCERNING A BOARD OF HEALTH.

Be it enacted by the General Assembly of the State of Colorado:

85. SECTION 1. The board of health, established by act of the council and house of representatives, approved, February 10, 1876, shall have power to make by-laws and all needful rules and regulations for its own government; and any member failing to obey said by-laws, or to comply with said rules and regulations, shall be subject to removal, upon a vote of a majority of the members of said board, and upon certification of the same to the governor of the state by the secretary of the board, the governor shall declare the office vacant, and immediately fill the vacancy by the appointment of some other person.

Powers of state board of health.

Members may be removed for cause and vacancies filled.

86. SEC. 2. All money received by the board from the state, or otherwise, shall be expended in the manner deemed best by the board for carrying out the objects for which it was created.

How money received from the state shall be expended.

87. SEC. 3. Section eight of an act to establish a territorial board of health, approved February 10, 1876, is hereby repealed.

Repeal.

Approved, March 22, 1877.

CHAPTER IX.

BONDS, BILLS, AND PROMISSORY NOTES.

[Revised Statutes, Chapter X.]

88. SECTION 1. When any foreign bill of exchange, which may be drawn for any sum of money, expressing that the value has been received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest thereon from the time such bill ought to have been paid until paid, and ten per cent. damages in addition, together with the costs and charges of protest.

Liability of drawer or indorser of foreign bill of exchange.

89. SEC. 2. If any bill of exchange, drawn upon any person, or body politic or corporate, out of this state, but

Liability of drawer or indorser of bill of exchange, payable out of this state but within the United States.

within the United States or her territories, for the payment of money, and expressed to be for value received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest thereon from the time such bill ought to have been paid, and ten per cent. damages in addition, together with all costs and charges of protest.

All promissory notes, etc., taken to be due to the person to whom made.

90. SEC. 3. All promissory notes, bonds, due-bills, and other instruments in writing made by any person, whereby such person promises or agrees to pay any sum of money, or article of personal property, or any sum of money in personal property, or acknowledges any sum of money, or article of personal property, to be due to any other person or persons, shall be taken to be due and payable to the person or persons to whom the said note, bond, bill, or other instrument in writing is made.

Any such notes, etc., made payable to any person, shall be assignable by indorsement thereon.

91. SEC. 4. Any such note, bill, bond, or other instrument in writing, made payable to any person or persons, shall be assignable by indorsement thereon, under the hand of such person and of his assignee, in the same manner as bills of exchange are, so as absolutely to transfer and vest the property thereof in each and every assignee successively.

Assignee may maintain an action in his own name.

92. SEC. 5. Any assignee to whom such sum of money or personal property is by such indorsement made payable, or in case of the death of such assignee, his executors or administrators may, in his own name, institute and maintain the same kind of action for the recovery thereof, against the person who made and executed any such note, bond, bill, or other instrument of writing, or against his heirs, executors, or administrators, as might have been maintained against him by the obligee or payee, in case the same had not been assigned, and in every such action, in which judgment shall be given for the plaintiff or plaintiffs, he shall recover his damages, and costs of suit, as in other cases.

93. SEC. 6. No maker of any such note, bond, bill, or

other instrument in writing, or other person liable thereon, shall be allowed to allege payment to the payee, made after notice of such assignment, as a defence against such assignee or assignees.

Allegation of payment to payee, after notice of assignment, not allowed as defense against action by assignee.

94. SEC. 7. Every assignor or his heirs, executors, or administrators, of every such note, bond, bill, or other instrument in writing, shall be liable to the action of the assignee thereof, or his executors or administrators, if such assignee shall have used due diligence, by the institution and prosecution of a suit against the maker of such assigned note, bond, bill, or other instrument of writing, or against his heirs, executors, or administrators, for the recovery of the money or property due thereon, or damages in lieu thereof; *provided*, that if the institution of such suit would have been unavailing, or if the maker had absconded, or left the state, when such assigned note, bond, bill, or other instrument in writing became due; such assignee, or his executors or administrators, may recover against the assignor, or against his executors or administrators, as if due diligence by suit had been used.

Liability of assignor to assignee.

95. SEC. 8. If any such note, bond, bill, or other instrument in writing, shall be indorsed after the day on which the money or property therein mentioned becomes due and payable, and the indorser shall institute an action thereon against the maker of the same, the defendant, being maker, shall be allowed to set up the same defense that he might have done had the said action been instituted in the name and for the use of the person to whom the said note, bond, bill, or other instrument of writing was originally made due and payable.

If note, etc., is assigned after maturity, the maker allowed the same defense against assignee as against payee.

96. SEC. 9. If any such note, bond, bill, or other instrument of writing shall be indorsed before the day the money or property therein mentioned becomes due and payable, and the indorser shall institute an action thereon, the defendant may give in evidence at the trial any money or property actually paid on said note, bond, bill, or other instrument in writing, before the same was indorsed or assigned to the plaintiff, on proving that the plaintiff had sufficient notice of the said payment before he accepted or received such indorsement.

In case of assignment before maturity, maker may show in defense payments to payee before assignment, of which assignee had notice.

When want or failure of consideration may be plead.

97. SEC. 10. In any action commenced, or which may hereafter be commenced in any court of law of this state, upon any note, bond, bill, or other instrument in writing, for the payment of money or property, or the performance of covenants or conditions by the obligor or maker thereof, if such note, bond, bill, or instrument in writing was made or entered into without a good or valuable consideration, or if the consideration upon which such note, bond, bill, or instrument was made or entered into has wholly or in part failed, it shall be lawful for the defendant against whom such action shall have been commenced, by such obligee or payee to plead such want of consideration or that the consideration has wholly or in part failed, and if it shall appear that any such note, bond, bill, or instrument of writing, was made or entered into without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant, and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the equity of the case; *provided*, that nothing in this section contained shall be construed to affect or impair the right of any *bona fide* assignee of an instrument made assignable by this chapter, when such assignment was made before such instrument became due.

Right of assignee of assignable instrument not to be impaired in case of assignment before instrument becomes due.

Instruments obtained by fraud are rendered void, except when negotiated before due.

98. SEC. 11. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded in bar to any action to be brought on any such instrument so obtained, whether such action be brought by the party committing such fraud or circumvention, or any assignee of such instrument, unless such instrument was negotiated before due.

In case of note payable in personal property, when tender of delivery of such property may be made.

99. SEC. 12. In all cases where any of the before-mentioned instruments of writing are for the payment or delivery of personal property other than money, and no particular place be specified in such instrument of writing for the payment thereof, it shall be lawful for the maker of any such instrument of writing to tender or cause to be tendered, on the day mentioned in any such instrument, the personal property therein mentioned, at the place where the

obligee or payee of any such instrument resided at the time of the execution thereof; *provided, however*, if such personal property be too ponderous to be easily moved, or if the obligee or payee of such instrument have not, at the time of the execution of such instrument of writing, a known place of residence in the county where the maker resides, then it shall be lawful to tender such personal property at the place where the maker of such instrument resided at the time of the execution thereof. Any tender made in pursuance of this section, shall be equally valid and legal in case any such instrument of writing shall have been assigned in pursuance of the fourth section of this chapter, as if no such assignment had been made.

Legal tender of such personal property discharges maker of instrument from liability.

100. SEC. 13. A legal tender of any such personal property shall discharge the maker of any such instrument from all liability thereon, and the property thus tendered is hereby declared to be vested in and and belong to the legal holder and owner of any such instrument of writing, and he may maintain an action for the recovery thereof or for damages, if the possession be subsequently illegally withheld from him; *provided, however*, if any such property so tendered shall be of a perishable nature, or shall require feeding or other sustentation, and the person owning and holding such instrument of writing be absent at the time of tendering the same, it shall be lawful for every person making such tender, to preserve, feed and otherwise take care of the same, and he shall have a lien on such tendered property for his reasonable trouble and the expenses of feeding or sustaining such property, until payment be made for such trouble and expense.

Proviso as to perishable property.

Days of grace allowed on bills of exchange and promissory notes; not to apply to checks and drafts payable at sight.

101. SEC. 14. Three days of grace shall be deemed and taken to apply to all bills of exchange and promissory notes maturing within this state, so that they shall not be deemed to fall due until the third day from and after the day of maturity expressed therein; but this provision shall not extend to drafts payable at sight, nor to checks for funds deposited in bank or elsewhere, subject to draft at sight.

102. SEC. 15. Bills of exchange and promissory notes maturing on Sunday, the fourth day of July, Christmas, or

Bills and notes maturing on Sunday, etc., deemed to be due the day previous.

any day set apart by the president of the United States or the governor as a day of public fasting or thanksgiving, shall be deemed to fall due the previous day, and may be presented and protested accordingly.

AN ACT RELATING TO BONDS AND INTEREST THEREON, HERETOFORE ISSUED BY COUNTIES, CITIES AND TOWNS.

Be it enacted by the General Assembly of the State of Colorado:

Bonds may be purchased or exchanged for stock, or stock exchanged for bonds.

103. SECTION 1. Any county, city or town that has heretofore subscribed to the capital stock of any organized railroad or wagon road, and issued bonds in payment therefor, in the manner provided in section fifty-two (52) of chapter eighteen (18) of the revised statutes of the territory of Colorado, the same being section one (1) of "an act relating to railroads, wagon roads, and mining companies, subscription to stock, issue of bonds, taxes to pay interest and principal by counties, cities and towns, and for other purposes," approved January 10, 1868, or under an act entitled "an act to amend an act to enable road, ditch, manufacturing and other companies to become bodies corporate," and the several acts amendatory thereto, approved December 27, 1867, or any other act of the legislature of Colorado now in force, may, by the county commissioners of such county, or the mayor, or president of such city or town, purchase said bonds at the market rates, if required to liquidate and redeem them, and said bonds may be exchanged into said stock, or said stock into such bonds, if deemed expedient by said commissioners, mayor, or president; *provided however*, that such exchange shall not be made by any board of county commissioners except after notice by such commissioners of their intention so to do at least thirty (30) days before the time of such proposed exchange; such notice to be given and published in the same manner as hereinafter provided by this act for the sale or transfer of such stock; and if, at the expiration of such time, fifty (50) tax payers of such county, who may feel aggrieved shall, in writing, request of such commissioners

County commissioners shall give notice of intention to exchange and call election, if requested by tax payers.

that an election be held to determine whether such exchange shall be made or not, it shall be the duty of said board to call an election, and such election shall be called, held and conducted, and the votes cast at the same shall be canvassed and the result declared, as hereinafter provided in this act, for the sale and transfer of such stock, and if it shall appear at such election there is a majority of the legal votes in favor of such exchange, then the exchange shall be made; but if it appear that a majority of the legal votes cast at such election is against such exchange, the same shall not be made; but if notice be given, as required in this section, of such proposed exchange, and the request for an election shall not be made, as aforesaid, then such exchange shall be made.

Bonds exchanged for stock how to be cancelled.

104. SEC. 2. If at any time such exchange shall be made, the said board of county commissioners may assign such stock, and shall, on the receipt of such bonds, in the presence of the clerk of said board, or his deputy, cancel such bonds and the coupons attached thereto, by writing the word "cancelled" on the face thereof; and the clerk of the said board shall make a record of the proceedings, stating what amount of such bonds and coupons were cancelled, and shall enter in the book of registry of such bonds the fact of such cancellation of both bonds and coupons.

Sale or transfer of stock, for liquidation and redemption of bonds, to be submitted to voters.

105. SEC. 3. When any board of county commissioners, mayor or president of any city or town, which has heretofore issued bonds in payment of stock as aforesaid, shall deem it expedient to sell or transfer such stock to liquidate and redeem such bonds, it shall be the duty of said commissioners, mayor or president, to call an election of the legal voters of such county, city or town, to approve and vote for such sale or transfer; public notice of such election shall be given thirty days prior to the day of such election in any newspaper published in such county, city, or town; if no newspaper is published therein, notice shall be posted at least thirty (30) days prior to such election, at the usual places of holding elections in each precinct in such county, city or town; such election shall be held, conducted, and the votes returned and canvassed accord-

How election called and held.

If sale or transfer authorized, proceeds to be applied to liquidate and redeem bonds.

ing to the laws then regulating such elections; if upon canvassing the votes cast at any such election it shall be found that a majority of all the votes cast are in favor of such sale or transfer, the commissioners, mayor, or president aforesaid, shall thereupon sell and transfer said stock, and the proceeds of sale of such stock shall be exclusively applied to purchase, liquidate or redeem such bonds and interest thereon.

106. SEC. 4. It shall be the duty of the county commissioners of any county, or the mayor, president, municipal authorities, or assessors of any city or town, that has issued bonds under the acts specified in section one (1) of this act, to duly levy and assess a special tax annually upon the taxable property in such county, city or town, in amount sufficient to pay the interest coupons, when and where due, upon all such bonds, and for the proper expenses of collecting, remitting and disbursing such funds; and after ten (10) years from date and issue of any such bonds, said counties, cities or towns shall provide by taxation to pay at least five per cent. of the principal amount of such bonds annually thereafter, until the full amount of such bonds shall have been paid, purchased or redeemed, and all the interest thereon due; the taxes so levied and assessed shall be collected as other taxes and the proceeds remitted and paid to the treasurer of the state, (except the taxes levied, assessed and collected to pay the principal or interest on bonds issued prior to February first, A. D. one thousand eight hundred and sixty-eight, which shall be retained by the county treasurer, to be by him paid out as hereinafter provided,) as custodian of such funds, but shall only and exclusively be applied to the payment of interest and principal, or purchase of such bonds by him, and for the expenses thereof; the purchase or redemption of such bonds may be done when authorized by said commissioners, mayor or president of the counties, cities, or towns issuing such bonds. The treasurer shall be paid a reasonable compensation for such service in the payments, purchase or redemption, from the proceeds of taxes or otherwise.

Annual tax to be levied and collected for payment of interest.

Fund to be provided by taxation for redemption of five per cent. of bonds annually.

State treasurer custodian of fund, and shall p ırchase and redeem bonds when authorized

107. SEC. 5. The auditor of state, shall when any of

the bonds aforesaid (except bonds issued prior to February first, A. D. one thousand eight hundred and sixty-eight,) are paid by the county commissioners of any county, or the mayor or president of any city or town, receive ten cents each, for cancelling such bonds, and registering the same, to be paid by said commissioners, mayor or president. It shall be the duty of the auditor to include the sums due, or to be paid on such bonds, in his report for taxation in such counties, cities or towns, and the amount received and paid on account of such taxes, and payment of such bonds, as required of him in his duties to the general assembly. In cases of neglect or delay of any county, city or town officers to levy, assess or collect and remit the taxes herein provided for, to the treasurer of the state, in time to meet such interests or payment of principal, and purchase of bonds, any such officer shall be liable to a fine of not less than five hundred dollars for each offense, to be paid to such bond holder as may sue for the same; and the state treasurer and auditor, may appoint proper agents to collect and remit such taxes. Any such bond that may be purchased or fully paid, shall be so recorded and cancelled.

Auditor of state shall cancel and register bonds redeemed, and shall report sums due or to be paid and amount received and paid.

Officers neglecting to levy, collect and remit such tax, liable to penalty, and agents may be appointed.

108. SEC. 6. Whenever there shall be a surplus of funds arising from taxes levied, assessed and collected for the payment of interest on bonds issued prior to February first, A. D. one thousand eight hundred and sixty-eight, after the payment of interest due, such surplus shall be held and applied by the board of county commissioners of the county issuing such bonds, to the purchase of such bonds for cancellation; and when any such bonds shall be so purchased, the same shall be returned to the county clerk of the county, who shall cancel the same and all coupons attached thereto, in the manner hereinabove provided; and all taxes levied, assessed and collected for the payment of principal or interest of such bonds, shall be by the county treasurer of the county paid out, either for the purchase of bonds for cancellation as aforesaid or for the payment of accrued interest or the principal of said bonds as the board of county commissioners shall direct; and it shall be the duty of such county treasurer to remit

Bonds issued prior to Feb. 1, 1868.

Surplus, after payment of interest, to be applied to purchase of bonds.

County clerk shall cancel such bonds.

County treasurer shall remit annually to agent money for payment of interest, etc.

annually to such agent as the said board may direct or may be designated by law, the amount of money collected for the payment of interest of such bonds or such portion thereof as the said board may direct; and such agent shall

Agent to report payment and return coupons and bonds paid.

report the payments made, together with the cancelled coupons or bonds so paid, to the county treasurer; who shall thereupon report to the county commissioners and return to the county clerk all such bonds and coupons for cancellation.

County clerk shall publish report of outstanding bonds, amount of interest, and number of bonds cancelled.

109. SEC. 7. The county commissioners shall annually cause to be published, and it shall be the duty of the county clerk, annually to publish in some newspaper published in said county, a full report of the amount of the bonds outstanding, the amount of interest paid and due thereon, and the amount and number of the bonds that shall have been purchased and cancelled.

County commissioners to cancel bonds and coupons paid.

110. SEC. 8. Whenever any county bonds that have been heretofore issued, or that shall be hereafter issued for any purpose shall be paid, or whenever the interest coupons of said bonds shall be paid, it shall be the duty of the board of county commissioners of the county issuing such bonds, to cancel said bonds and coupons, in the manner provided in section two (2) of this act, for the cancellation of bonds.

Approved March 9, 1877.

CHAPTER X.

BUILDINGS.

AN ACT RELATING TO THE CONSTRUCTION OF BUILDINGS USED FOR PUBLIC ASSEMBLAGES.

Be it enacted by the General Assembly of the State of Colorado:

Width of doorways.

111. SECTION 1. Every room or building intended to be used as a theatre, opera house, music hall, concert hall, public school or church, or other like place of public assemblage hereafter built or constructed, shall be provided with at least one doorway of not less than five feet in width for each two hundred and fifty persons which might be seated

within such building in the part thereof intended for public assemblage, and with proper and sufficient ways and passages leading to and from every such doorway, so that in case of fire or other sudden alarm those who may be within such building may speedily and safely escape therefrom.

Shall not be rented, leased or occupied for public assemblies, unless conforming to this act.

112. SEC. 2. No room or building intended for use as a theatre, opera house, music hall, concert hall, public school or church, or other place of public assemblage, heretofore constructed and not in conformity with the provisions of this act, shall be rented, leased or occupied for any such purpose until the same shall be altered to conform to this act.

Penalty for building or leasing any building for public assemblies not in conformity with this act.

113. SEC. 3. Every proprietor who shall hereafter build or procure to be built, or shall lease or procure or permit to be used as a theatre, opera house, concert hall, music hall, public school or church, or for any other like public assemblage, any building not in conformity to this act, shall be deemed guilty of a misdemeanor and upon conviction thereof fined in a sum not exceeding five hundred dollars.

Action for recovery of rent shall not lie.

114. SEC. 4. No action shall lie to recover the rent on any lease or contract made after this act shall take effect for the use or occupation of any room or building used as a theatre, opera house, concert hall, music hall, public school or church, or other like place of public assemblage, unless such room or building was at the time of such renting, use or occupation, provided with doorways and passages and means of safe escape therefrom in case of fire, in conformity with this act.

Doors shall be unfastened, and stairways and passages kept free from obstructions.

115. SEC. 5. All doors provided for the doorways of every such room or building shall open outwards, and every person using or occupying any such room or building as a theatre, opera house, concert hall, music hall, public school or church, or for other like public assemblage, shall during the whole of every exhibition, performance or assemblage therein cause all the doors thereof to be left unfastened or latched or barred upon the inner side only, and so that any person may readily and speedily open the same from the inner side of such room or building; and shall cause all the stairways and other ways and passages leading to every such door to be kept open and free from persons seated or

Penalty.

standing therein from other obstructions; and any person failing to observe this section shall be deemed guilty of a misdemeanor, and upon conviction thereof fined in a sum not exceeding two hundred dollars.

Dimensions of stairways.

116. SEC. 6. Whenever any building or buildings, shall be hereafter erected, for the purpose of accommodating public assemblages, and the rooms intended for such purpose shall not be on the first floor of such building, it shall be the duty of the persons erecting the same to provide and erect, at least two fire-proof stairways of ample dimensions sufficient for the sudden egress of the assemblies of the same.

Penalty if loss of life occurs.

117. SEC. 7. If any lives shall be lost by reason of the wilful negligence and failure to observe the provisions of this act, the person through whose default such loss of life was occasioned shall be deemed guilty of manslaughter and punished by a fine not less than one thousand nor more than five thousand dollars, or imprisonment in the penitentiary not less than six months nor more than ten years, or by both such fine and imprisonment in the discretion of the court.

Approved February 20, 1877.

CHAPTER XI.

BUTCHERS.

[Revised Statutes, Chapter XI.]

Butcher to give bond conditioned to keep record of cattle purchased or slaughtered, with description, date of and from whom purchased and to keep hide and horns for inspection.

118. SECTION 1. Every person, before he shall set up and carry on the trade or business of a butcher or slaughterer of horned cattle in this state, shall file a bond, approved by the county commissioners, with the clerk of the county in which he desires to carry on the business, in a sum not less than one thousand dollars nor more than five thousand dollars, running to the people of the state of Colorado, conditioned that he shall keep a true and faithful record, in a book kept for the purpose, of all cattle purchased or slaughtered by him, with a description of the animal, including marks, brands, age, weight, and from

whom purchased, and the date thereof, and to keep the hide and horns of such animal free to the inspection of all persons, for the period of thirty days after it is slaughtered.

Penalty for carrying on business without giving bond.

119. SEC. 2. Every person who shall be found carrying on the business of butcher or slaughterer in this state, without having filed the bond provided in the first section of this act, shall be deemed guilty of a misdemeanor, and be fined in a sum not less than fifty nor more than one hundred dollars, for every day he shall carry on such business, to be recovered before any justice of the peace of the proper county, or by indictment in the district court.

Penalty for failing to keep record and preserve hide and horns.

120. SEC. 3. Every person who shall carry on the business of butcher or slaughterer of horned cattle, and shall fail to keep a true and faithful record in a book kept for the purpose, of all cattle purchased or slaughtered by him, together with a description of each animal, including marks, brands, age, weight, and from whom purchased, and the date thereof, or fail to keep the hide and horns of such animal or animals for thirty days after such animal is slaughtered, shall be deemed guilty of a misdemeanor, and for each offense fined in a sum not less than ten nor more than one hundred dollars, to be recovered as provided in the second section of this act.

Penalty for refusing to permit inspection or examination of record or hide and horns.

121. SEC. 4. The record provided for in this act shall be open to the inspection of all persons, and also the hide, and horns, for the period of thirty days, and any butcher or slaughterer refusing to permit such inspection or examination, shall be subject to a fine of not less than ten nor more than twenty-five dollars for each offense, to be recovered as provided in section two of this act.

Disposition of fines recovered; sureties on bond liable for fines.

122. SEC. 5. All fines and penalties so recovered under this act shall be paid into the county treasury of the proper county, and the offender and his sureties shall be liable on the bond provided for in the first section of this act, for all fines, penalties and costs adjudged against him under the provisions of this act. Said bond may be sued on, in the name of the people, in any court of competent jurisdiction.

Appeals allowed

123. SEC. 6. Appeals shall be allowed in cases arising under this act, as in other cases.

CHAPTER XII.

CHATTLE MORTGAGES.

AN ACT TO REPEAL ALL EXISTING LAWS CONCERNING CHATTLE MORTGAGES, AND TO ENACT OTHER PROVISIONS IN LIEU THEREOF.

Be it enacted by the General Assembly of the State of Colorado:

Chattel mortgage not valid against rights of third person, unless property delivered or mortgage recorded.

124. SECTION 1. No mortgage on personal property shall be valid as against the rights and interests of any third person or persons, unless possession of such personal property shall be delivered to and remain with the mortgagee, or the said mortgage be acknowledged and recorded, as hereinafter directed.

Acknowledgement of chattel mortgage, where and before whom taken.

125. SEC. 2. Any mortgagor of personal property shall acknowledge such mortgage before any justice of the peace or notary public in the precinct in which he may reside, or where such property, or the greater portion thereof, may at any time be situate; when there be no justice of the peace or notary public in the precinct, then the next nearest justice of the peace or notary public shall take the acknowledgement: and said justice of the peace or notary public shall certify the same as follows: "This mortgage was acknowledged before me by A—— B——, this—— day of——, A. D. 18—," and such justice or notary public shall make on his docket or record a memorandum thereof, in substance as follows: "A—— B——, to C—— D——, mortgage of (here describe the property), acknowledged this —— day of——, 187—," inserting the name of the mortgagor in place of A. B., in each instance, and the name of the mortgagee in place of C. D.; and the justice or notary public shall be entitled to a fee therefor, of fifty cents, and fifteen cents per folio for recording such memorandum; provided, however, that if any such mortgage is entitled to be acknowledged as aforesaid in any justice's precinct, in which is located the county seat of any county, the same may be acknowledged before any justice of the peace, notary public or county clerk, of such county or precinct, and the said notary public or county clerk shall certify the same in substance as above provided; and when

Certificate of acknowledgement.

Fees for taking acknowledgement.

When acknowledgement may be taken by county clerk.

so certified, such mortgage shall be recorded with the same effect as hereafter provided in this act.

126. SEC. 3. Any mortgage of personal property, so certified, shall be admitted to record by the recorder in the county wherein the property mortgaged, or the greater portion thereof, shall be situated, as aforesaid, and shall thereupon, if *bona fide*, be good and valid from the time it is so recorded, for a space of time not exceeding two years, nothwithstanding the property mortgaged or conveyed by deed of trust may be left in the possession of the mortgagor; provided, that such conveyance shall provide for the property so to remain with the mortgagor.

Where to be recorded. Shall be valid for two years, and property may remain in possession of mortgagor if mortgage so provides.

127. SEC. 4. A copy of any such mortgage, made, acknowledged and recorded as in the act provided, certified by the recorder of any county wherein the same is recorded, may be read in evidence in any court of this state without any further proof of the execution of the original thereof, if it shall appear from the affidavit or sworn statement of any credible witness that the original is lost, or that it is not in the power of the person wishing to use the same to produce it.

Certified copy may be read in evidence.

128. SEC. 5. For recording and making a copy of any such mortgage, the recorder shall receive the same compensation as is or may be allowed by law for recording and making copies of deeds to real estate.

Fees of recorder.

129. SEC. 6. Any person having conveyed any article of personal property to another by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said personal property to a third person for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to the purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof.

Penalty for selling mortgaged property to third person without notice.

130. SEC. 7. The provisions of this act shall be deemed to extend to all such bills of sale, deeds of trust, and other conveyances of personal property, as shall have the effect of a mortgage or lien upon such property.

To extend to bills of sale and deeds of trust.

131. SEC. 8. If any mortgagor of personal property which has been mortgaged in pursuance of this act, during

Sale, transfer, or encumbrance of mortgaged property by mortgagor without notice to mortgagee and purchaser, deemed larceny.

the existence of such mortgage, shall sell, transfer, or in any way encumber such mortgaged property, or any part thereof, or cause the same to be sold, transferred or encumbered, such sale, transfer or encumbrance, shall be deemed a larceny of such mortgaged property so sold, transferred or encumbered, and the mortgagor shall be deemed guilty of such larceny, the same, to all intents and purposes, as though there had been a felonious taking and conversion of such property by such mortgagor, and on conviction thereof shall be punished accordingly; unless at the time of making such sale, transfer, or encumbrance, such mortgagor shall fully advise and acquaint the person to whom such sale, transfer or encumbrance may be made, with the fact of the prior encumbrance and mortgage, and also first fully apprise the mortgagee of the intended sale, giving to such mortgagee the name and place of residence of the party to whom the sale, transfer or encumbrance is to be made.

Transfer, concealment, or carrying away of mortgaged property, without written consent of mortgagee, misdemeanor.

132. SEC. 9. If any person, having conveyed any article of personal property by mortgage, shall, during the existence of the lien or title created by such mortgage, transfer, conceal, take, drive or carry away, contrary to the provisions of the mortgage, or in any way or manner dispose of said property, or any part thereof, or cause or knowingly suffer the same to be done without the written consent of the mortgagee of said property, he shall be deemed guilty of misdemeanor, and shall be liable to indictment, and on conviction thereof shall be punished by fine not less than twice the value of the property so sold or disposed of, or confined in the county jail not exceeding one year, or both, at the discretion of the court, and shall stand committed until the fine and all costs of such prosecution shall be paid; *provided*, that such commitment shall not exceed one year.

Penalty.

Disposition of fines.

The fine mentioned in this act shall be paid to the treasurer of the county in which the offense shall be committed, for the benefit of the school fund of such county.

Failure to record mortgage not to invalidate lien, if party obtaining interest in such property has notice of mortgage.

133. SEC. 10. Any person who may buy or otherwise obtain any interest in any personal property which is mortgaged in pursuance of this act, but the mortgage of which has not been recorded, and with actual notice of such mort-

gage, shall be deemed and considered to have bought or obtained such interest in such property subject to such mortgage, the same as though such mortgage had been properly recorded.

134. SEC. 11. Chapter fourteen of the revised statutes of Colorado, entitled "Chattel Mortgages," and an act entitled an act to amend said chapter, approved February 13, 1874, and all other acts or parts of acts in conflict with this act be, and the same are hereby repealed; *provided*, that all chattel mortgages executed before this act shall take effect in virtue of the laws hereby repealed, and all rights vested thereunder shall not in any manner be affected by the passage of this act.

Acts repealed.

Rights heretofore created not to be affected.

Approved, March 7, 1877.

CHAPTER XIII.

CLERKS OF COURTS.

AN ACT TO AUTHORIZE CLERKS OF COURTS OF RECORD TO APPOINT DEPUTIES.

Be it enacted by the General Assembly of the State of Colorado:

135. SECTION 1. That every clerk of a court of record shall have power, by and with the approval of the judge, or judges appointing such clerk, to appoint one or more persons to act as his deputy or deputies, who may perform the duties of such office, in the name of his or their principal.

Clerks of courts authorized to appoint deputies

136. SEC. 2. Such appointment shall be in writing, under the hand and official seal of the clerk and entered on the records of the court. Such deputy shall hold his office at the pleasure of his principal, and shall take and subscribe a like oath of office prescribed by law for his principal.

Appointment to be under seal, and deputy to subscribe oath.

Approved, January 13, 1877.

CHAPTER XIV.

COAL MINES.

AN ACT TO COMPEL OWNERS OF COAL MINES TO FENCE THEIR SLACK PILES AND ABANDONED PITS.

Be it enacted by the General Assembly of the State of Colorado:

Slack piles to be fenced.

137. SECTION 1. That the owner or operators of coal mines from which fine or slack coal is taken and piled upon the surface of the ground, in such quantities as to produce spontaneous combustion, shall fence said ground in such manner as to prevent loose cattle or horses from having access to such slack piles.

Abandoned coal pits or shafts to be filled or fenced.

138. SEC. 2. All owners of lands having abandoned coal pits, or shafts on the same, of sufficient depth to endanger the life of cattle, horses, or other stock, shall fence or fill said pits or shafts in such a manner as to afford permanent protection to all such stock endangered thereby.

Penalty for violation.

139. SEC. 3. Every person violating sections one (1) and two (2) of this act shall be deemed guilty of a misdemeanor and shall be fined in a sum not less than twenty (20) dollars, nor more than one hundred (100) dollars, to be collected as other fines are collected, and shall be further liable to any party injured thereby, in the amount of the actual injury sustained.

Approved, February 2, 1877.

CHAPTER XV.

COMMISSIONER OF MINES.

AN ACT TO ESTABLISH THE OFFICE OF COMMISSIONER OF MINES, AND TO REPEAL AN ACT, ENTITIED, "AN ACT TO ESTABLISH A TERRITORIAL ASSAY OFFICE," APPROVED JANUARY 10, 1868; ALSO, "AN ACT TO ESTABLISH ASSAY OFFICES IN COLORADO TERRITORY," APPROVED FEBRUARY 8, 1872; ALSO, "AN ACT TO ESTABLISH ASSAY OFFICES IN COLORADO TERRITORY," APPROVED FEBRUARY 10, 1874; ALSO, "AN ACT TO AMEND AN ACT ENTITLED AN ACT TO ESTABLISH ASSAY OFFICES IN COLORADO TERRITORY," APPROVED FEBRUARY 11, 1876.

Be it enacted by the General Assembly of the State of Colorado:

Office established.

141. SECTION 1. The production and reduction of ores being a leading industry of the people of Colorado, and

being pursuits in which all are interested, and from which all derive benefit, and reliable statistical information of values concerning mines and milling, being only accessible through the ministerial powers of the state; therefore, in accordance with the provisions of section 1, of article 16, of the constitution of the state of Colorado, the office of commissioner of mines is hereby established.

Appointment of commissioner and term of office.

141. SEC. 2. There shall be appointed by the governor of the state, with the advice and consent of the senate, a commissioner of mines, who shall be a person known to be competent, theoretically and practically acquainted with mining and the treatment of ores, whose term of office shall be four (4) years, unless sooner removed for good cause, and whose office shall be at the state school of mines, at Golden; *provided*, that when a vacancy shall exist in the foregoing office, and the senate shall not be in session, the governor shall have power to appoint said commissioner of mines, who shall perform the duties and receive the compensation of such office as hereafter provided, until the next session of the general assembly, when the governor shall submit such appointment to the senate for their approval or rejection.

In case of vacancy.

Commissioner shall have seal.

142. SEC. 3. The commissioner of mines shall have a seal bearing the words, "Commissioner of Mines of the State of Colorado," which shall be kept by him expressly for the use of his office, and said seal shall be affixed to official documents only.

Duties generally

143. SEC. 4. It shall be the duty of the commissioner of mines to collect reliable statistical information concerning the production and reduction of all precious or useful minerals in this state; to examine the different processes for the treatment of ores, used in this state, and to inquire into the merits of other processes alleged or demonstrated by practical experience elsewhere, to be the most successful; to inquire into the relative merits of the various inventions, machines, mechanical contrivances, now in use, or which may be hereafter introduced, for mining and metallurgical purposes.

Powers.

144. SEC. 5. The commissioner of mines shall have power and authority, either in person, or by a duly ap-

pointed deputy, to visit and examine any mine or piece of mining ground, for the purposes of ascertaining the condition of the same in regard to its safety and means of egress from the same, and, for this purpose, shall have access to any and all levels, stopes, tunnels, winzes, shafts, and shaft-power of any mine, for the purpose of said inspection.

Duties in case of dangerous mines

145. SEC. 6. Whenever the commissioner of mines, or his duly authorized deputy, shall receive a formal complaint in writing, signed by two or more persons, setting forth that the mine in which they are employed is dangerous in any respect, he shall visit and examine such mine, and if from such personal examination he shall ascertain that the facilities for egress are insufficient, or that from want of timbering, scaling or slacking of the ground in such mines, so visited, or from other causes, or that the timbers, ladders, ladder-ways, pentices or plats, in any such mine, are in a dangerous condition, it shall become his duty to notify the owners, lessor or lessee thereof, such notice to be in writing, and to be served by copy on any person or persons, in the same manner as provided by law for the serving of legal notices or process; said notice shall state in what particular such egress is insufficient, or in what particulars timbers, ladders, ladder-ways, pentices or plats are dangerous, and shall require the necessary changes to be made without unnecessary delay. And in case any criminal or civil procedure at law against the party or parties so notified on account of loss of life or bodily injury sustained by any employé subsequent to such notice, and in consequence of a neglect to obey the commissioner's requirement, a certified copy of the notice served by the commissioner shall be *prima facie* evidence of the culpable negligence of the party or parties so complained of.

Reports and correspondence.

146. SEC. 7. It shall be the duty of the commissioner of mines to keep on file in his office, reports and papers, which may be published from time to time, and all correspondence on the subject of mining and milling, and reducing ores, with a view to eliciting and collecting such information for the public use; he shall address circulars to corporations and individuals engaged in mining, and shall correspond with the school of mines in other states and elsewhere, in reference to mining, metallurgy, etc.

147. SEC. 8. It shall be the duty of said commissioner to collect, arrange, and classify mineral and geological specimens found in this state, and to keep the same in a department of reference and study, in the state school of mines; he shall also, by analysis or assay, determine the character and value of the same. Mineral and geological specimens.

148. SEC. 9. It shall be the duty of the commissioner of mines to assay, or cause to be assayed and analyzed in the laboratory of the state school of mines, specimens of the different ores, minerals, metals, coals and mineral water, mined or obtained in this state, whenever requested so to do; he shall keep a permanent record of the same, giving the name of the county, mining district, lode, ledge, deposit, vein or spring, whenever obtained, together with the value and contents thereof; for such assay or analysis, the commissioner of mines shall charge for each and every analysis, assay or test, as follows:— Shall make assays, keep record and account of moneys received for assays, and pay same into state treasury.

For Silver only	. . . . .	$ 1 00
" Gold and silver	. . . . .	2 00
" Zinc, lead, or copper	. . . . .	2 00
" Analysis of coal	. . . . .	10 00
" Analysis of ores, from $5 to $10	. . . . .	10 00
" Analysis of minerals, from $3 to $10	. . . . .	10 00
" Analysis of mineral water not more than	. . . .	30 00

Fees for assays.

He shall keep a correct account of all moneys received from such assays or analysis, and the sum shall be paid by him into the state treasury monthly, and used solely for the fund of the commissioner of mines and state school of mines, and in case of the failure or neglect of the commissioner of mines to keep the record, or to pay into the state treasury all money received by him for analysis, assays and tests, as required by this section, he shall be deemed guilty of a misdemeanor, and may, upon conviction thereof, be punished by fine not to exceed [five hundred dollars] $500, said fine to be recovered in any court of competent jurisdiction, and paid into the state treasury, for the benefit of the school of mines. Penalty for failure to keep record, etc.

149. SEC. 10. It shall be the duty of the commissioner of mines, at least once in each year, either in person or by a duly authorized deputy, to visit each mining county in Examination of mines.

the state, and examine as many of the mines in the different counties as practicable.

Annual report.

150. SEC. 11. The commissioner of mines shall report to the governor of the state, on or before the fifteenth of January, in each year for the year ending on the thirty-first day of December of the preceding year, which report shall contain all statements of accounts, moneys received and expended, statistics, and other information which may tend to promote the development of the mineral resources of the state.

Duties of commissioner in examination of coal mines.

151. SEC. 12. He shall at least once during every six months after the date of his appointment, examine carefully the principal coal mines being worked in this state, as to the safety of the workings, the condition of the air in the mines, and the best means of ventilation; the amount of coal excavated, and whether children under fourteen years of age are permitted to work in such coal mines; which facts he shall faithfully report, with recommendations, in his annual report; and for the purpose of making full and thorough examinations he shall have access to all workings in any coal mine owned or worked by any corporation or individuals in this state, and is hereby authorized and required to inspect and examine such mine in all its workings. To facilitate such examination, all corporations or individuals working coal mines in the state, shall keep a true and complete plat of all the workings of such coal mine, with explanatory notes, showing the method of ventilation in such mine, which plat shall be corrected every four months; any agent or superintendent of any corporation or individual working coal mines in this state, who shall refuse to permit said commissioner of mines to examine such mine or who shall neglect to keep a correct plat of the workings of such mine, or who shall employ or permit to be employed in such coal mine, any children under fourteen years of age, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred (500) dollars, or by imprisonment not exceeding one year for each offense.

Corporations or individuals to keep correct plats of workings in coal mines.

Children under fourteen years of age not to be employed in coal mines.

Penalty.

152. SEC. 13. The commissioner of mines shall devote his entire time to the duties of his office, and shall receive

a salary of three thousand (3,000) dollars per annum, and with the consent of the governor of the state shall appoint a deputy commissioner of mines, at a salary not exceeding twelve hundred (1,200) dollars per annum; that on and after the year 1877 the salary of the commissioner and deputy commissioner of mines and assistant, as well as the contingent expenses of the same, shall be paid out of the fund provided for the support of the school of mines. The deputy commissioner shall be under the direction and control of the commissioner, who may remove him for good cause. He shall also appoint as assistant commissioner of mines, the professor in charge of the school of mines at Golden, at a salary of seven hundred (700) dollars per annum, in addition to his pay as said professor. The duties of the assistant commissioner shall be to act as deputy commissioner in the absence of the commissioner, to take charge of the state cabinet, and to make the assays and analyses required in sections eight (8) and nine (9) of this act.

Salary of commissioner; appointment and salary of deputy.

Appointment of assistant; salary and duties

153. SEC. 14. The above salaries to be paid monthly, and contingent expenses to be paid on presentation of vouchers certified to under oath by the commissioner of mines; and the auditor shall draw his warrants accordingly; *provided*, that the amount of contingent expenses for any one year shall not exceed two thousand three hundred (2,300) dollars.

Payment of salaries and contingent expenses.

154. SEC. 15. The different acts to establish assay offices in the territory of Colorado, approved January 10, 1868, and February 11, 1874, and 1876, also that part of section two (2) of "an act to provide for the several expenses of the year 1876, and 1877, approved February 11, 1876, relating to the appropriation for paying the salaries of the territorial assayers," and all other acts and parts of acts inconsistent with this act are hereby repealed.

Repeal.

155. SEC. 16. All property belonging to the state that is in the possession of the territorial assayers, shall be turned over to the commissioner of mines.

State property in possession of assayers.

Approved, April 13, 1877.

CHAPTER XVI.

COMMON LAW.

[Revised Statutes, Chap. XVI.]

Common law of England and acts of British Parliament prior to fourth year of James I, adopted, with certain exceptions, as rule of decision.

156. SECTION 1. The common law of England, so far as the same is applicable and of a general nature, and all acts and statutes of the British Parliament, made in aid of or to supply the defects of the common law prior to the fourth year of James the First, (excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth and ninth chapter of thirty-seventh Henry Eighth,) and which are of a general nature, and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

CHAPTER XVII.

CONSTITUTIONAL AMENDMENTS.

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF THE STATE OF COLORADO, AN AMENDMENT TO SECTION TWENTY-NINE, ARTICLE VI, OF THE CONSTITUTION OF THE STATE OF COLORADO, CONCERNING THE JUDICIAL DEPARTMENT.

Be it enacted by the General Assembly of the State of Colorado:

Proposed amendment to Sec. 29, Article VI, to be submitted to vote at next general election.

157. SECTION 1. That there shall be submitted to the qualified electors of the state of Colorado, at the next general election for members of the general assembly, for their approval or rejection, the following proposed amendment to the Constitution of the state of Colorado: which when ratified by a majority of those voting thereon shall be valid as part of the Constitution, to wit: Section twenty-nine of article VI, of the Constitution of the State of Colorado, be stricken out and in lieu thereof, there be inserted the following words for section twenty-nine: "All officers provided for in this article excepting judges of the supreme court shall respectively reside in the district, county, precinct, city or town, for which they may be elected or

appointed. Vacancies occurring in any of the offices provided for in this article shall be filled by appointment as follows: of judges of the supreme and district courts, by the governor; of district attorneys, by the judge of the court of the district for which such attorney was elected; and of all other judicial officers by the board of county commissioners of the county wherein the vacancy occurs. Judges of the supreme, district and county courts appointed under the provisions of this section shall hold office until the next general election and until their successors elected thereat shall be duly qualified."

Ballots to be for or against amendment.

158. SEC. 2. Each elector voting at said election, shall deposit in the ballot box a ticket, whereon shall be written or printed, "For the amendment," or the words "Against the amendment."

Canvass of votes

159. SEC. 3. The votes cast for the adoption or rejection of said amendment, shall be canvassed, and the result determined, in the manner provided by the laws of the state, for the canvass of votes for representative in congress.

Approved February 23, 1877.

CHAPTER XVIII.

CONVEYANCES.

[Revised Statutes, Chapter XVII.]

Who may convey real estate by deed.

160. SECTION 1. Any person, association of persons, body politic or corporate, who shall be entitled to hold real estate, or any interest in real estate whatever, shall be authorized to convey the same to another, or others, or body corporate or politic, by deed.

Livery of seisin not necessary to conveyance.

161. SEC. 2. Livery of seisin shall in no case be necessary for the conveyance of any lands, tenements or hereditaments.

No estate in joint tenancy, save to executors and trustees, unless expressly declared in conveyance.

162. SEC. 3. No estate in joint tenancy, in any land, tenements or hereditaments, shall be held or claimed under any grant, devise or conveyance whatsoever hereafter made, other than to executors and trustees, unless the

premises therein mentioned shall be thereby expressly declared to pass, not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees, (unless otherwise expressly declared as aforesaid,) shall be deemed to be tenancy in common.

A deed purporting to convey a fee simple title, shall convey title afterwards acquired.

163. SEC. 4. If any person shall sell and convey to another, by deed or conveyance, purporting to convey an estate in fee simple absolute, any tract of land or real estate lying and being in this state, not being possessed of the legal estate or interest therein at the time of the sale and conveyance, and after such sale and conveyance, the vendor shall become possessed of, and confirmed in, the the legal estate to the land or real estate so sold and conveyed, it shall be taken and held to be in trust, and for the use of the grantee or vendee, and the conveyance aforesaid shall be held and taken, and shall be as valid as if the grantor or vendor had the legal estate or interest at the time of said sale or conveyance.

A party claiming title to lands may convey the same though not in actual possession.

164. SEC. 5. Any person claiming right or title to lands, tenements, or hereditaments, although he, she, or they may be out of possession, and notwithstanding there may be an adverse possession thereof, may sell, convey, and transfer his or her interest in and to the same in as full and complete a manner as if he or she were in the actual possession of the lands and premises intended to be conveyed.

Estate in tail abolished.

165. SEC. 6. In cases where, by the common law, any person may become seized in fee-tail of any lands, tenements, or hereditaments, by virtue of any devise or conveyance, or by any other means whatsoever, such person, instead of being or becoming seized in fee-tail thereof, shall be deemed and adjudged to be seized of such lands, tenements, and hereditaments, for his or her natural life only; and the remainder shall pass in fee simple absolute to the person or persons to whom the estate would first pass on the death of such first grantee, devisee, or donee in tail, according to the course of the common law, by virtue of such devise or conveyance.

166. SEC. 7. Every estate in lands which shall be granted, conveyed, or devised to one, although other words

heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple estate of inheritance, if a less estate be not limited by express words, or do not appear to be granted, devised, or conveyed by operation of law.

Every deed construed to convey an estate in fee simple, unless otherwise limited.

167. SEC. 8. When an estate hath been, or shall hereafter be, by any conveyance, limited in remainder to the child or children of any person to be begotten, such child or children born after the decease of his, her, or their parent, shall take the estate in the same manner as if he, she, or they had been born in the lifetime of the parent, though no estate shall have been conveyed to support the contingent remainder after his death.

Conveyance in remainder to a child to be begotten, not defeated by death of parent before birth of child, though no estate conveyed to support the remainder.

168. SEC. 9. All conveyances of real estate, and of any interest therein, duly executed and delivered, shall be held to carry with them the right to immediate possession of the premises or interest conveyed, unless a future day for the possession is therein specified.

All conveyances held to carry right to immediate possession, unless future time specified.

169. SEC. 10. Covenants of seisin, peaceable possession, freedom from encumbrances, and of warranty contained in any conveyance of real estate, or of any interest therein, shall be held to run with the premises, and to inure to the benefit of all subsequent purchasers and encumbrancers.

What covenants run with the premises.

170. SEC. 11. No right of action shall exist upon a covenant of warranty against a warrantor, when possession of the premises warranted hath been actually delivered to or taken by the warrantee, until the party menacing the possession of the grantee, his heirs, personal representatives or assigns, shall have commenced legal proceedings to obtain possession of the premises in question, and the grantor, after notice, shall have refused to defend at his own cost the premises in such action.

When action may be maintained on covenant of warranty

171. SEC. 12. In order that all conveyances which are executed by any attorney in fact, may be seen to be executed with the assent of the grantor, the power of attorney of the attorney in fact, duly proved or acknowledged, shall be (if it has not been) recorded in the same office in which the conveyances themselves are required to be recorded.

Powers of attorney to be recorded.

How deeds acknowledged and proved.

172. SEC. 13. Deeds, bonds and agreements in writing, conveying lands, or any interest therein, or affecting title thereto, may be acknowledged or proved before the following officers:

First—When executed within this state, before any justice of the supreme or district courts, before any clerk of the supreme or district courts, or the deputy of any such clerk, or before the county judge of any county, such county judge and such clerks severally certifying such acknowledgment under the seal of such court respectively; before the clerk and recorder of any county or his deputy, he certifying the same, or his deputy, under the seal of such county; before any notary public, he certifying the same, under his notarial seal, or before any justice of the peace within his county: *Provided*, That if such deed, bond or agreement, be for the conveyance of lands situate beyond the county of such justice, there shall be affixed to his certificate of such acknowledgement, a certificate of the clerk of the proper county, under his hand and the seal of such county, to the official capacity of such justice of the peace, and that the signature to such certificate of acknowledgment is the true signature of such justice.

Second—Where executed out of this state, and within the United States, or the territories thereof; before the secretary of any such state or territory, he certifying such acknowledgment under the seal of such state or territory, before the clerk of any court of record of such state or territory, or of the United States, within such state or territory having a seal, such clerk certifying the acknowledgment under the seal of such court; before any other officer authorized by the laws of such foreign state or territory to take and certify such acknowledgment: *Provided*, There shall be affixed to the certificate of such officer, a certificate by the clerk of some court of record of the county, city or district wherein such officer resides, under the seal of such court, that the person certifying such acknowledgment is the officer he assumes to be; that he has authority by the laws of such state or territory to take and certify such acknowledgment, and that the sig-

nature of such officer to the certificate of acknowledgment is the true signature of such officer; before any commissioner of deeds for such foreign state or territory, appointed under the laws of this state, such commissioner certifying such acknowledgment under his hand and official seal.

Third—When executed out of the United States; before any court of record of any foreign republic, kingdom, empire, state, principality or province having a seal, the acknowledgment being certified by the judge or justice of such court, to have been made before such court, and such certificate to be attested by the seal of such court; before the mayor or other chief officer of any city or town having a seal, and such mayor or other officer certifying the same under such seal; before any consul of the United States within such foreign country, he certifying the same under the seal of his consulate.

Person making acknowledgement of deed to be personally known to officer before whom acknowledgement is made, or identified, and officer shall so certify.

173. SEC. 14. No judge, clerk or other officer, shall hear or certify any such acknowledgment unless the person making the same shall be personally known to such officer to be the identical person who executed such deed, or shall be proved to be such by at least one competent, credible witness, and the officer hearing such acknowledgment shall state in his certificate thereof that the person making such acknowledgment was personally known to him to be the same person who executed such deed or other instrument in writing, or was proved to be such by the oath of some credible witness, to be named in such certificate in the presence of such officer.

How deed not acknowledged may be proved.

174. SEC. 15. When any such deed or instrument of writing has heretofore been or shall hereafter be executed, and not acknowledged according to law at the time of the execution thereof, such deed or instrument of writing may at any time subsequent be acknowledged by the makers thereof, in the manner hereinbefore provided, or proof may be made of the execution thereof, before any officer authorized hereby to take acknowledgments of deeds in manner following. Such officer, when the fact is not within his own knowledge, shall ascertain from the testimony of at least one competent, credible witness, to be sworn and examined by him, that the person offering to prove the execution of

such deed or writing, is a subscribing witness thereto, and thereupon such officer shall examine such subscribing witness upon oath or affirmation, and shall reduce his testimony to writing, and require the said witness to subscribe the same, indorsed upon or attached to such deed or other writing, and shall thereupon grant a certificate that such witness was personally known, or was proved to him by the testimony of at least one witness (who shall be named in such certificate) to be a subscribing witness to the deed or instrument of writing to be proved; that such subscribing witness was lawfully sworn and examined by him, and his testimony by him, the said officer, reduced to writing, and by said subscribing witness subscribed in his presence; and if by the said testimony it shall appear that such witness saw the person whose name is subscribed to such instrument of writing, sign, seal and deliver the same, or that such person afterwards acknowledged the same to the said witness to be his free and voluntary act or deed, and that such witness subscribed the said deed or instrument of writing in attestation thereof, in the presence and with the consent of the person so executing the same, such proof if attested and the authority of the officer to take the same, duly proved in the same manner as required in the case of an acknowledgment, shall have the same force and effect as an acknowledgment of said deed or instrument of writing by the person or persons executing the same, and duly certified. When any such deed or instrument of writing has heretofore or shall hereafter be executed and recorded without due proof, attestation or acknowledgment, as required by law, a certified copy from such record may be proved or acknowledged in the same manner and with like effect as the original thereof, but no person shall be admitted to use such certified copy so proved, as evidence, except upon satisfactory proof that the original thereof hath been lost or destroyed, or is beyond his power to produce.

Powers of attorney for conveyance of lands to be acknowledged and proved in same manner as deeds.

175. SEC. 16. Powers of attorney for the conveying, leasing or releasing of any lands, tenements or hereditaments, or any interest therein may be acknowledged and proved in the same manner as deeds.

Deeds, etc., to be recorded, and to be in force as to third persons, from date of filing for record.

176. SEC. 17. All deeds, conveyances, agreements in writing of, or affecting title to real estate or any interest therein, and powers of attorney for the conveyance of any real estate or any interest therein, may be recorded in the office of the recorder of the county wherein such real estate is situated, and from and after the filing thereof for record in such office and not before, such deeds, bonds and agreements in writing shall take effect as to subsequent *bona fide* purchasers and encumbrancers by mortgage, judgment or otherwise not having notice thereof.

Deeds, etc., acknowledged or proved in accordance with laws of this state, to be evidence without proof of execution.

177. SEC. 18. All such deeds, bonds, agreements and powers of attorney acknowledged or proved in accordance with this chapter, or acknowledged, attested or proved in accordance with the laws of this state, or the local laws of the mining district wherein such real estate is situate, in force at the date of such acknowedgment, attestation or proof may be read in evidence, without, in the first instance additional proof of the execution thereof, and the record of any such deed, bond, agreement or power of attorney, whether an original record of any mining district, or a copy thereof deposited in the recorder's office of any county, in accordance with the laws of this state, (as a part of the records of such mining district) or a record of such recorder's office, when the same appears by such record to be properly acknowledged, attested or proved in accordance with the laws of this state or of the proper mining district, in force at the date of such acknowledgment, attestation or proof, or a transcript from any such record, certified by the recorder of the proper county, where such deed, bond, agreement, or power of attorney ought by law to be of record, may, upon affidavit of the party desiring to use the same, that the original thereof is not in his possession or power to produce, be read in evidence with like effect as the original of such deed, bond or power of attorney, properly acknowledged, attested or proved as aforesaid.

Record of deeds, etc., or transcript of such record, to be evidence in case of loss of original.

178. SEC. 19. Deeds, bonds, and agreements in writing, for the conveyance or encumbering of real estate, or any interest therein, shall be deemed from the time of being filed for record, notice to subsequent purchasers or encum-

Deeds, etc., though not acknowledged, deemed to be notice to subsequent encumbrancers, but not to be used in evidence unless subsequently acknowledged or proved.

brancers, though not acknowledged or proven according to law, but neither the same, nor the record thereof, shall be read as evidence, unless subsequently acknowledged or proved according to law, or unless their execution be otherwise approved in the manner required by the rules of evidence applicable to such writings, so as to supply the defects of such acknowledgment or proof; this section shall apply as well to all such deeds, bonds and other writings heretofore recorded, as to those hereafter to be recorded.

A sworn translation of deed executed and acknowledged in foreign language, attached thereto, shall be evidence.

179. SEC. 20. Deeds, bonds, agreements in writing, and powers of attorney for the conveyance of lands, or any interest therein, or affecting the title thereto, executed in any foreign country, and the acknowledgment or proof of execution thereof executed, heard, taken and certified in the language of such foreign country, and a translation thereof into the English language, and thereto attached, by any person learned in the language of such foreign country, and by such person sworn to be a true and correct translation thereof, before any officer or court authorized to take the acknowledgment of deeds, shall entitle such deed, bond, agreement or power of attorney, and the certificate of acknowledgment or proof thereof to be read in evidence, and recorded with like effect, as if written in the English language; but such translation shall not be conclusive upon any party desiring to question the correctness thereof. No such deed or other writing shall be entitled to record unless accompanied by such sworn translation.

Certificate of acknowledgement to be endorsed on, or attached to deed.

180. SEC. 21. Every certificate of the acknowledgment, or proof of any deed, bond, agreement, power of attorney or other writing for the conveyance of real estate or any interest therein, or affecting title thereto, shall be subscribed by the officer certifying the same, with his proper hand, and shall be indorsed upon or attached to such deed or other writing.

How counties and cities may convey real estate.

181. SEC. 22. The board of county commissioners of any county, or the common council of any city, may by order, to be entered of record among the proceedings of such board or council, appoint a commissioner to sell and

convey any real estate belonging to such city or county, and to affix to any conveyance thereof the seal of such city or county; and such conveyance executed in accordance with such order shall have the effect to transfer to the grantee named, all the estate of such county or city in the real estate so conveyed.

How private corporations may convey real estate.

182. SEC. 23. Private corporations authorized by law to convey any of their real estate, may convey the same in the manner authorized by this chapter, or by deed under their common seal, subscribed by their president or other head officer.

Covenant, how far to bind married woman.

183. SEC. 24. No covenant expressed or implied in the deed of any married woman shall have any effect to bind such married woman, or her heirs, save so far as to pass to the purchaser named therein all her present estate in the real estate therein described, thereby expressed to be conveyed.

Deed of sheriff or other officer, to be acknowledged as other deeds.

184. SEC. 25. Deeds executed, or which may hereafter be executed by any sheriff or other officer for real estate sold upon execution, or pursuant to the decree or order of any court, shall be acknowledged or proved, and admitted to record in like manner and with like effect as other deeds. The successor in office of any sheriff or other officer, shall have authority to execute deeds for real estate sold by his predecessor upon execution at law, or the judgment, order or decree of any court of equity.

Successor of sheriff to execute deeds for lands sold by his predecessor.

The terms "land," "real estate," and "deed," construed.

185. SEC. 26. The terms "land," and "real estate," as used in this chapter, shall be construed as co-extensive in meaning with the terms "lands, tenements and hereditaments," and as embracing mining claims and other claims, and chattels real. The term "deed" includes mortgages, leases, releases and every conveyance or encumbrance under seal

When county divided, how records transcribed; certified copies of transcribed records to be evidence.

186. SEC. 27. Whenever any county has been, or hereafter shall be divided, and a portion of the territory thereof erected into a new county, or added to some other county, the board of commissioners of such new county, or of the county to which such territory is added, may at the expense of their own county procure to be transcribed from the records of the county to which such territory was

originally attached, copies of all deeds, bonds, agreements, powers of attorney, and other writings conveying or affecting title to any real estate situate within the territory so separated, and for this purpose the person whom such board may appoint, shall have free access at all reasonable times to the records of the original county. Such records shall be transcribed into a suitable, well-bound book, and the person transcribing the same shall affix thereto at the end of all such transcripts his affidavit that the same were by him transcribed from the records of such original county, and are true, correct, and examined copies of such records. Such book of transcribed records shall be deposited in the office of the recorder of the new county, or of the county to which such territory is assigned, as a part of the records thereof; and such transcribed records or copies therefrom, certified by the recorder in whose office the same are deposited, shall have the same effect as evidence as the original records of such deeds, bonds, agreements, powers of attorney, and other writings.

Commissioners of deeds, how appointed, and powers.

187. SEC. 28. The governor of this state may appoint and commission, in any state or territory of the United States, one or more commissioners, to continue in office during the pleasure of the governor, who shall have power to administer oaths and to take depositions, and the proof and acknowledgement of deeds, or other instruments to be used or recorded in this state.

Oath of commissioner and impression of seal to be filed with secretary of state.

188. SEC. 29. Before any such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath before some officer authorized to administer oaths, in the state or territory for which he is appointed, that he will faithfully discharge the duties of his said appointment, which oath, together with an impression in wax of his seal of office, shall be filed in the office of the secretary of this state.

Not so construed as to embrace wills, etc.

189. SEC. 30. This chapter shall not be so construed as to embrace last wills and testaments.

Section 17, of Chapter XVII, Revised Statutes, Conveyances, repealed by act of February 12, 1874.

AN ACT CONCERNING ACKNOWLEDGEMENTS OF DEEDS AND OTHER INSTRUMENTS IN WRITING RELATING TO REAL ESTATE.

[Session Laws, 1874.]

How acknowledgements made before notary public out of this state shall be proved.

190. That all deeds and other instruments in writing relating to real estate in this state, which shall have been executed heretofore, or shall be hereafter executed, purporting to have been acknowledged or proved out of this state, before a notary public of any state or territory of the United States, shall be deemed *prima facie* to have been acknowledged or proved before a proper officer, and such deeds and other instruments in writing, and in case of the loss of the originals, a copy of the record thereof, with the certificate of acknowledgement or proof appertaining to the same, shall be received as *prima facie* evidence of the execution and acknowledgement thereof, anything in the statutes of this state to the contrary notwithstanding; *provided*, that before any such deed or other instrument in writing, or the record thereof, shall be read in evidence, a copy of the commission of such notary, certified by the secretary of the state or territory, under the seal of such state or territory, where such notary was commissioned, shall be recorded in the office of the recorder of the county where the real estate affected by such deed or other instrument in writing is situated.

CHAPTER XIX.

CORPORATIONS.

AN ACT TO PROVIDE FOR THE FORMATION OF CORPORATIONS.

Be it enacted by the General Assembly of the State of Colorado:

How names of corporations formed under this act designated.

191. SECTION 1. That corporations may be formed under the provisions of this act, for any lawful purpose, but the corporate name of every corporation hereafter organized (except Banks and corporations not for pecuniary profit), shall commence with the word "the" and end with the word "corporation," "company," "association"

or "society," and shall indicate by its corporate name the business to be carried on by said corporation.

What shall be stated in certificate of incorporation.

192. SEC. 2. At any time hereafter any three or more persons (except as hereinafter provided) who may desire to form a company for the purpose of carrying on any lawful business, may make, sign and acknowledge before some officer competent to take the acknowledgement of deeds, certificates in writing, in which shall be stated the corporate name of said company, the objects for which the company shall be created, the amount of the capital stock of said company, the term of its existence not to exceed twenty years, except as hereinafter provided, save and except to make perpetual, corporations insuring lives of individuals which have been heretofore or may be hereafter organized under the laws of Colorado, the number of shares of which the said stock shall consist, the number of directors or trustees of said company and the names of those who shall manage the affairs of such company for the first year of its existence, the name of the town, or place, and the county in which the principal office of the company shall be kept, and the name of the county or counties in which the principal business shall be carried on; and they shall make as many such certificates as may be necessary, so as to file one in the office of the recorder of deeds in each of such county or counties, and one in the office of the secretary of state; and when any company shall be created under the laws of this state for the purpose of carrying on part of its business beyond the limits thereof, such certificate shall state that fact, and shall also state the name of the town and county in this state in which the principal office of said company shall be kept, and shall state the name of the county in which the principal business of such company is to be carried on within this state.

Where certificate to be filed.

Certificate to be recorded by secretary of state and copies certified by him shall be evidence.

193. SEC. 3. When the certificates shall have been filed as aforesaid, the secretary of state shall record and carefully preserve the same in his office, and a copy thereof duly certified by the secretary of state under the great seal of the state of Colorado, shall be evidence of the existence of such company, but no certificate shall be filed or received for two corporations bearing the same name.

Certificates of two corporations bearing same name not to be filed.

194. SEC. 4. Corporations formed under this act shall be bodies corporate and politic in fact and in name, by the name stated in such certificate, and by that name have succession for the period for which they are organized; may in any court of law or equity in this state sue and be sued; may have a common seal, which they may alter or renew at pleasure, by filing an impression of the same in the office of the secretary of state; may own, possess and enjoy so much real and personal estate as shall be necessary for the transaction of their business, whether acquired by purchase, grant, devise, gift or otherwise, and may from time to time sell and dispose of the same or any part thereof when not required for the use of the corporation. They may borrow money and pledge their franchises and property both real and personal to secure the payment thereof; and may have and exercise all the powers necessary and requisite to carry into effect the objects for which they may be formed, as named in their certificate of incorporation.

Rights and privileges of corporations; may have common seal alterable at pleasure.

195. SEC. 5. The shares of stock shall not be less than ten (10) nor more than one hundred (100) dollars each, and shall be deemed personal property and transferable as such in the manner provided by the by-laws; and subscriptions therefor shall be made payable to the corporation, and shall be payable in such installments and at such time or times as shall be determined by the directors or trustees; and an action may be maintained in the name of the corporation to recover any installment which shall remain due and unpaid for the period of twenty (20) days after personal demand therefor, or in cases where personal demand is not made, within thirty (30) days after a written or printed demand has been deposited in the post-office properly addressed to the post-office address of such delinquent stockholder. The directors or trustees may by by-laws prescribe for a forfeiture or sale of stock, on failure to pay the installments or assessments that may from time to time become due, but no forfeiture of stock, or of the amounts paid thereon, shall be declared as against any estate, or against any stockholder, before demand shall have been made for the amount due thereon, either in person or by a written or printed notice, duly mailed to the last known address of such stock-

Representative value of shares. Subscriptions, payments and transfers to be determined by by-laws or trustees.

Actions to lie for recovery of unpaid installments, after demand or notice.

Forfeiture of stock not to be declared without personal demand or notice by mail.

holder, at least thirty (30) days prior to the time when such forfeiture is to take effect; *provided*, that the proceeds of any sale, over and above the amount due on said shares shall be paid to the delinquent stockholder.

Number, eligibility, and election of directors or trustees.

196. SEC. 6. The corporate powers shall be exercised by a board of directors or trustees of not less than three nor more than thirteen, who shall respectively be stockholders in said company, and who shall, (except the first year,) be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such elections shall be published not less than ten days' previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy; *provided*, a majority of the stock is represented. If a majority of the stock shall not be represented, such meeting may be adjourned by the stockholders present for a period not exceeding sixty days. All elections shall be by ballot and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company; and the persons receiving the greatest number of votes shall be directors or trustees, who shall hold their offices until their successors are elected and qualified, and when any vacancy shall happen among the directors or trustees by death, resignation or otherwise, it shall be filled for the remainder of the year as shall be provided by the by-laws of said company.

Majority of stock to be represented.

Vacancies, how filled.

Failure to hold election on day appointed not to effect dissolution of company.

197. SEC. 7. In case it should happen at any time that an election of directors or trustees shall not be held on the day designated by the by-laws of said company, when it ought to have been held, the company for that reason shall not be dissolved, but it shall be proper to elect such directors or trustees on any subsequent day as shall be prescribed by the by-laws.

How officers elected; to give bond if required.

198. SEC. 8. The directors or trustees shall elect one of their number to be president and may elect or appoint such subordinate officers as the company may by its by-laws designate, and such subordinate officers shall, if

required by the company, give security for the faithful discharge of their official duties.

By-laws, by whom made.

199. SEC. 9. The stockholders of any corporation formed under the provisions of this act, or the directors or trustees, if the certificate of incorporation so provide, shall have power to make such prudential by-laws as they deem proper for the management of the affairs of the company not inconsistent with the laws of this state, for the purpose of carrying on all kinds of business within the objects and purpose of such company.

Shares not to be purchased with funds of company, unless when forfeited.

200. SEC. 10. It shall not be lawful for such corporations to use any of their funds for the purchase of stock in their own company or corporation, except such as may be forfeited from the non-payment of assessments thereon, except as hereinafter provided.

Liability of stockholders.

201. SEC. 11. Each stockholder shall be liable for the debts of the corporation to the extent of the amount that may be unpaid upon the stock held by him, to be collected in the manner herein provided. Whenever any action is brought to recover any indebtedness against the corporation, it shall be competent to proceed against any one or more stockholders at the same time, to the extent of the balance unpaid by such stockholders upon the stock owned by them respectively, whether called in or not, as in cases of garnishment.

Sworn certificate of capital paid in to be filed and recorded.

202. SEC. 12. The president and a majority of the directors or trustees within sixty days after the payment of the last installment of the capital stock, so fixed and limited by the company, shall make a certificate, stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the directors or trustees, and they shall, within the said sixty days, record the same in the office of the secretary of state and a copy in the office of the recorder of deeds of the county wherein the business of the said company is carried on.

Examination of books, papers, and accounts of corporations, upon demand in writing.

203. SEC. 13. It shall be the duty of the directors or trustees of every corporation, except railroad and telegraph companies, to cause to be kept at its principal office or place of business in this state, correct books of account of

all its business, and any stockholder in such corporation shall have the right, at all reasonable time, to inspect and examine all the books, accounts, and papers of the corporation, and shall have the right as aforesaid to demand of any officer, clerk, cashier, or agent of any such corporation having in his control or custody any such books, accounts, or papers, as such stockholders may desire to examine or inspect; and upon such demand being made in writing, every such officer, clerk, cashier, or agent shall be bound to produce such books, accounts, and papers to such stockholder, and afford due opportunity to examine and inspect the same; and such stockholders shall have the right to take copies or make extracts therefrom, but shall not remove from the office of the corporation any such books, accounts, and papers. In case of refusal or neglect, by any such officer, clerk, cashier, or agent, to exhibit the same, or to allow the same to be inspected and copies or extracts to be taken therefrom by any stockholder making such request, or who shall secrete, conceal, or destroy any books, accounts, or papers, or who shall prevent, or endeavor to prevent, a full inspection of the same, shall be deemed guilty of a misdemeanor, and be liable to a penalty of two hundred dollars, or such less sum as a court or jury may find, to be recovered by action of debt, at suit of the person aggrieved, against the person offending, in the district court of the county where the principal office of such corporation is located.

Penalty for refusal to allow inspection, or for concealment, or destruction of books, papers or accounts.

Assessments or installments, how levied.

204. SEC. 14. All assessments or installments of the stock of any stock corporation, shall be levied by the directors or trustees in accordance with the provisions of the by-laws, except as hereinafter provided, but any assessments or installments required to be paid shall be levied *pro rata* upon all shares of such stock, except as hereinafter provided.

Stock issued in payment of property necessary for business of company, to be full paid and non-assessable.

205. SEC. 15. The directors or trustees of any corporation may purchase mines, manufactories and other property necessary for their business and issue stock to the amount of the value thereof in payment therefor; and the stock so issued shall be declared and taken to be full paid stock and not liable to any further calls or assessments, ex-

cept as hereinafter provided; neither shall the stockholders thereof be liable to any further payments under the provisions of section eleven (11) of this act, but in all statements and reports of the company, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts.

Annual report under oath to be filed in office of county clerk.

206. SEC. 16. Every such corporation shall annually, within sixty days from the first day of January, make a report, which shall state the amount of its capital and the proportion actually paid in, and the amount of existing debts; which report shall be signed by the president and shall be verified by the oath of the president or secretary of said company, under its corporate seal, and filed in the office of the recorder of deeds of the county where the business of the company shall be carried on. And if any such corporation shall fail so to do, unless the capital stock of said corporation has been fully paid in and a certificate made and filed as provided in section twelve (12) of this act, all the directors or trustees of the company shall be jointly and severally liable for all the debts of the company that shall be contracted during the year next preceding the time when such report should by this section have been made and filed, and until such report shall be made.

Liability of directors or trustees in case of failure to make such report.

Extent of liability in case of payment of dividends by benevolent corporation, or diminution of capital stock.

207. SEC. 17. If the directors, trustees or other officers or agents of any corporation shall declare and pay any dividend when such corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would dimish the amount of its capital stock, all directors, trustees, agents or officers assenting thereto, shall be jointly and severally liable for all debts of such corporation then existing, and for all that shall thereafter be contracted while the capital remains so diminished.

Meetings of directors or trustees; validity of acts.

208. SEC. 18. The by-laws of every corporation shall provide for the calling of meetings of the directors or trustees, and when such directors or trustees shall be present at any meeting, however called or notified, or shall sign a written consent thereto, on the record of such meeting, the acts of such meeting shall be as valid as if called and notified: *Provided*, that unless it shall be stated in the certificate of incorporation, that meetings of the directors

When acts of meetings held without the state are valid.

or trustees may be held beyond the limits of this State, or unless such meeting was authorized or its acts ratified by a vote of a majority of the stockholders at a regular meeting, the action of any meeting held beyond the limits of this state, shall be void.

Liability of officers for making false representations.

209. SEC. 19. If any certified report or statement made, or public notice given, by the officers of any corporation, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all damages arising therefrom.

Extent of liability of executor, administrator, conservator, guardian, or trustee holding stock.

210. SEC. 20. No person holding stock in any corporation as executor, administrator, conservator, guardian or trustee, and no person holding such stock as collateral security shall be personally subject to any liability as stockholder of such corporation, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, conservator, guardian, or trustee shall be liable in like manner and to the same extent, as the testator or intestate, or the ward or person interested in such trust funds would have been if he had been living, and had been competent to act and held the stock in his own name.

Representation of stock by executor, administrator, conservator, guardian, or trustee.

211. SEC. 21. Every executor, administrator, conservator, guardian or trustee shall represent the stock in his hands at all meetings of any such corporations, and may vote accordingly as a stockholder, and every person who shall pledge his stock may nevertheless represent the same at all meetings and vote accordingly.

When action may be maintained against stockholders for debts of corporation, and extent of liability.

212. SEC. 22. If any corporation or its authorized agent shall do any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record for a payment of money, after demand made by the officer, to be returned "no property found," or to remain unsatisfied for ten days after such demand, or shall dissolve or cease doing business, leaving debts unpaid, suits in equity may be brought against all persons who were stockholders at the time, or liable in any way for the debts of the corporation, by join-

ing the corporation in such suit, and each stockholder may be required to pay such debts or liabilities to the extent of the unpaid portion of his stock; and courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, to appoint a receiver therefor, who shall have authority by the name of the receiver of such corporation, (giving the name) to sue in all courts, and to do all things necessary to closing up its affairs as commanded by the decree of the court.

Power of courts to dissolve corporations and appoint receiver.

213. SEC. 23. Foreign corporations shall, before they are authorized or permitted to do any business in this state, make and file a certificate signed by the president and secretary of such corporation duly acknowledged, with the secretary of state, and in the office of the recorder of deeds of the county in which such business is carried on, designating the principal place where the business of such corporation shall be carried on in this state, and an authorized agent or agents in this state residing at its principal place of business upon whom process may be served; and such corporations shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. And no foreign or domestic corporation established or maintained in any way for pecuniary profit of its stockholders or members, shall purchase or hold real estate in this state, except as provided for in this act, and no corporation doing business in this state, incorporated under the laws of any other state shall be permitted to mortgage, pledge or otherwise encumber its real or personal property situated in this state, to the injury or exclusion of any citizen, citizens or corporations of this state who are creditors of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state shall take effect as against any citizen or corporation of this state, until all its liabilities due to any person or corporation in this state at the time of recording such mortgage have been paid and extinguished.

Duties of foreign corporations before commencing business in this state.

Liabilities, restrictions and duties of foreign corporations.

214. SEC. 24. Every company incorporated under the

Foreign corporations to file copy of charter, or certificate of incorporation and copy of incorporation law with secretary of state.

laws of any foreign state or kingdom or of any state or territory of the United States, beyond the limits of this state, and now or hereafter doing business within this state shall file in the office of the secretary of state a copy of their charter of incorporation; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and of such general incorporation law duly certified and authenticated by the proper authority of such foreign state, kingdom or territory.

Liability of foreign corporations for failure to comply with provisions of this act.

215. SEC. 25. A failure to comply with the provisions of sections 23 and 24 of this act shall render each and every officer, agent and stockholder of any such corporation, so failing herein, jointly and severally personally liable on any and all contracts of such company made within this state during the time that such corporation is so in default.

Certificates, statutes and charters, to be filed in the office of secretary of state.

216. SEC. 26. The several certificates, statutes and charters mentioned in section twenty-four (24) of this act, shall be by the secretary of state filed and preserved in his office as a part of the record thereof, and he shall be entitled to a fee of fifty cents for receiving and filing every such certificate and statute. Copies of such charters, statutes and certificates, duly certified by the secretary of state under his seal of office, shall be received in all courts of this state, as sufficient evidence of the corporate character of such incorporations, and of all their powers, duties and liabilities and the originals thereof may in like manner be used in evidence of these matters, with like effect.

Certified copies evidence in court.

In what manner suits may be instituted by or against corporations.

217. SEC. 27. Suits may be instituted and prosecuted by and against any corporation formed or recognized [organized] under this act, in the same manner and in like cases as natural persons.

Copies of articles of incorporation, certified under seal of state, shall be evidence in courts.

218. SEC. 28. The certified copy of any articles of incorporation and changes thereof together with all endorsements therein, [thereon] under the great seal of the state of Colorado, shall be taken and received in all courts and places, as *prima facie* evidence of the facts therein stated.

Consent of local authorities necessary for construction of street railroad in towns or cities.

219. SEC. 29. Nothing in this act shall be construed to allow the construction of any street railroad, by any corporation formed under the provisions of this act, in any

city or town, without the consent of the local authorities thereof.

How and upon whom summons may be served, and actions brought.

220. SEC. 30. In suits against any corporation, summons shall be served in that county where the principal office of the corporation is kept or its principal business carried on, by delivering a copy to the president thereof, if he may be found in said county, but if he is absent therefrom, then the summons shall be served in like manner in such county, on either the vice-president, secretary, treasurer, cashier, general agent, general superintendent, or stockholder of said corporation, within such time, and under such rules as are provided by law for the service of such process in suits against real persons, and if no such person can be found in the county where the principal office of the corporation is kept, or in the county where its principal business is carried on, to serve such process upon, a summons may issue from either one of such counties, directed to the sheriff of any county in this state where any such person may be found, and served with process. If such corporation keeps no principal office in any county, and there is no county in which the principal business of such corporation is carried on, then suit may be brought against it in any county where the above mentioned officers, or any, or either of them may be found; *provided*, that the plaintiff may, in all cases, bring his action in the county where the cause of action accrued.

When statement of affairs of corporation shall be made.

221. SEC. 31. Whenever any person or persons owning fifteen (15) per cent. of the capital stock of any corporation formed under this act, shall present a written request to the secretary, cashier, or treasurer thereof, that they desire a statement of the affairs of such corporation, it shall be the duty of such secretary, cashier, or treasurer, to make a statement of the affairs of said company, under oath, embracing a particular account of all its assets and liabilities in detail, and to deliver such statement to the persons who presented the said written request to said secretary or treasurer, within twenty (20) days after such presentation; and shall also, at the same time, place and keep on file in the office of the company, for six months thereafter, a copy of such statement, which shall at all times,

during business hours, be exhibited to any stockholder of said corporation demanding an examination thereof; such officer, however, shall not be required to make such statement, in the manner aforesaid, oftener than once in six months.

Corporations other than railroad and telegraph companies shall keep a book containing names of stockholders, number of shares, etc., open for inspection.

222. SEC. 32. It shall be the duty of the directors or trustees of every such corporation, except railroad or telegraph corporations, to cause a book to be kept by the secretary, or a clerk thereof, containing the names of all persons, alphabetically arranged, who are, or shall within one year have been, stockholders of such corporation, and showing their place of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, and the time when they ceased to be such stockholders, and the amount of stock actually paid in, and what proportion has been paid in cash; which book shall, during the usual business hours of the day, be open for the inspection of the stockholders and creditors of the company, and their personal representatives, at the office or principal place of business of such company, in the county where its business operations shall be located; and any and every such stockholder, creditor, or representative, shall have a right to make extracts from such books; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this act, unless it shall have been entered therein as required by this section, within sixty days from the date of such transfer, by an entry showing to and from whom transferred. Such books shall be presumptive evidence of the facts therein stated, in any suit or proceedings against such corporation, or against any one or more stockholders. Every officer or agent of any such company, who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts taken therefrom, shall be as provided by this section, deemed guilty of a misdemeanor, and the corporation shall forfeit and pay to the party injured a penalty of fifty (50) dollars for every such neglect or refusal, and all the damages resulting therefrom.

Transfers of stock not valid unless entered in such book, except in the matter of liability of holder for debts of corporation.

Such book to be evidence.

Penalty for neglect to make proper entries, or refusal to allow inspection of book.

223. SEC. 33. The disolution for any cause whatever, of corporations created as aforesaid, shall not take away or impair any remedy given against such corporations, its stockholders, or officers, for any liabilities incurred previous to its dissolution. Dissolution of corporation not to effect limitation of liability or cause of action.

CORPORATIONS NOT FOR PECUNIARY PROFIT.

224. SEC. 34. Any three or more persons, citizens of the United States, who shall desire to associate themselves for any lawful purpose (other than pecuniary profit) under the provisions of this act, may make, sign and acknowledge before any officer authorized to take acknowledgments of deeds in this state, and file in the office of the secretary of state a certificate in writing, in which shall be stated, the name or title by which such corporation, association or society shall be known in law, the particular business and objects for which it is formed, the number of its directors, trustees or managers, and the names of those selected for the first year of its existence. What shall be stated in certificate.

225. SEC. 35. Upon filing a certificate as aforesaid, the secretary of state shall thereupon issue a certificate of the organization of the corporation, association, or society, duly authenticated under his hand and seal of state, and the same shall be recorded in the office of the recorder of deeds, of the county in which the principal place of business of such corporation, association, or society, is located. Upon complying with the foregoing conditions the corporation, association, or society shall be deemed fully organized, and may proceed to business. Secretary of state to issue certificate of organization, to be recorded in office of county clerk.

226. SEC. 36. Corporations, associations and societies (not for pecuniary profit) founded under this act, shall be bodies corporate, and politic by the name stated in such certificate, and by that name they and their successors shall and may have succession, and shall be persons in law capable of suing and being sued; may have power to make and enforce contracts in relation to the legitimate business of their corporation, society, or association; may have and use a common seal, and may change or alter the same at pleasure; and they and their successors, by their corporate Rights and privileges of corporations, etc., not for pecuniary profit; may have common seal alterable at pleasure.

name, shall, in law, be capable of taking, purchasing, holding and disposing of real and personal estate for purposes of their organization; may make by-laws not inconsistent with the laws of this state, in which by-laws shall be described the duties of all officers of the corporation, society, or association, and the qualification of members thereof. Associations and societies which are intended to benefit the widows, orphans, heirs and devisees of deceased members thereof, and where the members shall receive no money as profit or otherwise, shall not be deemed insurance companies.

Associations for benefit of heirs, devisees, etc., of deceased members not deemed insurance companies.

Directors, trustees, etc., how elected.

227. SEC. 37. Corporations, associations and societies (not for pecuniary profit) formed under the provisions of this act, shall elect trustees, directors or managers from the members thereof, at such times and places and for such period as may be provided by the by-laws, who shall have control and management of the affairs and frauds (funds) of the corporation, society or association.

Dividends, when and in what manner made.

228. SEC. 38. No dividend or distribution of the property of any such corporation, association or society shall be made until all debts are fully paid, and then only upon its final dissolution and surrender of organization and name, nor shall any distribution be made except by a vote of a majority of the members. When a distribution of any of their property is contemplated, the directors, trustees or managers shall file a statement under oath, in the office of the recorder of deeds in the county where the business office is located, that all debts of the corporation, association or society are paid, and in case a distribution shall be made before filing such statement under oath, or if such statement shall be wilfully false, said directors, trustees or managers shall be jointly and severally liable for the debts of such corporation, association or society. When a final dissolution of any such corporation, association or society, organized by virtue of this act, has been agreed upon, the directors, trustees or managers shall file, in the office of the secretary of state, a certificate thereof under seal of the corporation, association or society, and upon filing said certificate such organization shall cease to exist.

Liability of directors, etc., for making unauthorized distribution or false statement.

Certificate of final dissolution to be filed in office of secretary of state.

RELIGIOUS, EDUCATIONAL AND BENEVOLENT SOCIETIES.

Manner of incorporation of religious, educational, and benevolent societies.

229. SEC. 39. The foregoing provisions shall not apply to any religious, educational or benevolent societies or associations, but any church, congregation or society formed for religious worship, educational or benevolent purposes, may become incorporated under this act in the following manner, to wit: By electing or appointing, according to its usages or customs, at any meeting held for that purpose, two or more of its members as directors, trustees, wardens or vestrymen (or such other officers whose powers and duties are similar to those of trustees as shall be agreeable to the usages and customs, rules and regulations of such congregation, church or society), and may adopt a corporate name, and upon the filing of the affidavit as hereinafter provided, it shall be and remain a body politic and corporate by the name so adopted.

Form of affidavit to be filed in the office of county clerk.

230. SEC. 40. The chairman or secretary of such meeting shall, as soon as may be after such meeting, make and file in the office of the recorder of deeds in the county in which such congregation, church or society is organized, an affidavit substantially in the following form:

STATE OF COLORADO, }
————COUNTY, } SS.

I do solemnly swear (or affirm as the case may be) that at a meeting of the members of the (here insert the name of the society, as known before incorporation) held at————, in the county of———— and state of Colorado, on the———day of————, A. D. 18——, for that purpose, the following persons were elected or appointed (here insert the names) trustees, (or wardens, vestrymen or officers of whatever name they choose to adopt, with powers and duties similar to trustees according to the rules and usages of such society, church or congregation) adopted as its corporate name, (here insert the name) and at said meeting this affiant acted as (chairman or secretary, as the case may be).

(Name of Affiant.)

Subscribed and sworn to before me this
——— day of————A. D. 18

Such affidavit, or copy thereof, duly certified by the recorder, shall be received as evidence of the due incorporation of such congregation, church or society.

By-laws, how adopted.

231. SEC. 41. The directors, trustees, wardens or vestrymen of any such corporation shall adopt necessary by-laws to provide for the election of directors, trustees, wardens or vestrymen, and other officers, and for the proper government, in all respects, of such congregation, church or society.

Disposition of real and personal property held in trust.

232. SEC. 42. Upon the incorporation of any congregation, church or society, all real and personal property held by any person or trustees for the use of the members thereof, shall immediately vest in such corporation, and be subject to its control, and may be used, mortgaged, sold and conveyed the same as if it had been conveyed to such corporation by deed.

Such corporations heretofore existing, and reorganizing under this act, become vested with all property and are liable for all debts of former corporation.

233. SEC. 43. Any congregation, church, or society, heretofore incorporated under the provisions of any law for the incorporation of religious, educational, or benevolent societies, may become incorporated under the provisions of this act, relative to religious, educational, and benevolent societies, in the same manner as if it had not previously been incorporated, in which case the new corporation shall be entitled to, and invested with, all the real and personal estate of the old corporation, in like manner and to the same extent as the old corporation, subject to all the debts, contracts, and liabilities. The word trustees, whenever used in this act relative to religious bodies, shall be construed to include wardens, vestrymen, or such other officers as perform the duties of trustees.

Incorporation of denominational institutions.

234. SEC. 44. If any body of christians has, or shall have, according to its order or mode of government, an organization, whether known as synod, presbytery, conference, episcopate, or other name, with ecclesiastical or spiritual jurisdiction over its members throughout this state, and its authorities shall desire to engage in works of education, benevolence, charity, and missions, which works shall be of like extensive operation and benefit, and not of limited or local service, and they shall deem an incorporation convenient for the more successful administration of

said works, all or any of them, its said authorities, with such persons as they may associate with them, may cause such incorporation to be formed in the manner and with the powers hereinbefore provided for the incorporation of a church, congregation, or society.

Gift, devise, or purchase and conveyance of real and personal property.

235. SEC. 45. Domestic and foreign religious, educational, charitable and literary corporations or associations, operating within the state, may take by gift, devise or purchase, and hold real and personal property, and convey the same; and all gifts, devises and grants heretofore made to such corporations or associations are hereby ratified.

CEMETERIES.

Rights and privileges of cemetery associations.

236. SEC. 46. Any number of persons, not less than three, may associate themselves together under the provisions of this act, for the purpose of procuring and establishing a cemetery or place of sepulture; and being so associated, they shall upon compliance with the provisions of this act, be a body politic and corporate; may sue and be sued; have a common seal which they may alter at pleasure; may purchase, hold and convey real and personal estate; may choose a president and other officers; may enact by-laws for regulating the affairs of such corporation, not inconsistent with the laws of this state, and compel the observance thereof by suitable penalties, and may do any and all acts necessary and proper for the well ordering of the affairs of such corporation.

BANKS.

Organization of banking associations.

237. SEC. 47. Any number of persons, not less than three, may associate to establish a bank of discount and deposit, upon the terms and conditions, and subject to the liabilities prescribed in this act, but the aggregate of the amount of the capital stock of any such corporation or association shall not be less than thirty thousand (30,000) dollars. No bank organized under the provisions of this act shall transact any business until at least fifty per cent of its capital stock shall have been paid into the treasury of such bank, in cash, and until a certificate to that effect,

Not to commence business until fifty per cent. of capital paid in and certificate filed.

under oath of the president and cashier, shall be filed in the office of the secretary of state and in the office of the recorder of deeds in the county where such bank is located; nor shall said bank continue to transact business beyond the period of one year, unless the capital stock of such bank shall have been fully paid up in cash, and a certificate stating such fact, under oath of the president or cashier, shall be filed in the office of the secretary of state, and in the recorder's office aforesaid, nor shall any such corporation take as security for any loan or discount, a lien on any part of its capital stock, but the same security, both in kind and amount, shall be required of shareholders and of persons not shareholders; and no bank shall be the holder or purchaser of any portion of its own stock, or of the capital stock of any other incorporated company, unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith on security which at the time was deemed adequate to insure the payment of such debt, independent of any lien upon such stock; and stock so purchased shall in no case be held by the bank so purchasing for a longer period of time than six months, if the same can be sold for what the stock cost, or at par.

Shall not transact business longer than one year, unless capital fully paid in.

In what cases bank can purchase its own stock.

What certificate of incorporation shall state.

238. SEC. 48. Such persons shall under their hands and seals, make a certificate, which shall specify:

First—The name assumed to distinguish such corporation or association, and to be used in all its dealings.

Second—The place where the operations of discount and deposits of such banking corporation or association are to be carried on, designating the particular county, city or town at which place such association shall keep an office for the transation of its business.

Third—The amount of the capital stock of such association, and the number of shares into which the same is divided.

Fourth—The names and places of residence of the stockholders, and the number of shares held and owned by each of them respectively.

Fifth—The period at which such association shall commence and terminate.

Sixth—The names and place of residence of the several

directors and officers, and the number of shares of the capital stock of such corporation or association owned and held by each of such directors and officers, which certificate shall be acknowledged and filed as provided for in section two (2) of this act.

Powers and duties of banking associations.

239. SEC. 49. Such corporation or association when so organized, shall have power to carry on the business of banking, by discounting on banking principles upon such securities as the directors or trustees shall deem expedient; by receiving deposits; by buying or selling the bonds or stocks of this or any other state, or of the United States; also the bonds of any county, city, town or school district in this state, legally authorized to issue such bonds; gold and silver bullion; foreign coins and bills of exchange; by loaning money on personal security, and by exercising such incidental powers as may be necessary to carry on such corporation, association or business; to elect from their number (not exceeding nine (9) a board of directors, who may choose out of their number, a president and vice president, and appoint a cashier, teller and such other officers and agents as their business may require, and remove such president, vice president, cashier, tellers, officers and agents, at pleasure and appoint others in their place; the directors first elected shall hold their office till the first Monday in January next after their election, and until their successors are elected; and all subsequent elections shall be held annually on the first Monday in January, and the directors then elected shall hold their offices until their successors are elected. Each share shall entitle the owner to one vote, but he shall have no vote while any of his paper or liabilities held by said bank are past due and unpaid. Stockholders may vote by proxy duly authorized in writing.

Powers and duties of board of directors.

Annual election first Monday of January in each year.

Representation of stock at elections.

240. SEC. 50. No transfer of stock of any bank formed under this act shall be valid as against the bank, so long as the registered holder thereof shall be liable, either as principal, debtor, surety or otherwise to the association for any debts which shall be due and unpaid, nor in such case shall any dividend, interests or profits be paid on such shares, so long as such liabilities continue; but all such

Transfers of stock invalid, and payment of dividends not permitted, so long as holder is indebted to bank.

dividends, interests and profits shall be retained by the bank, and applied to the discharge of such liabilities; and no stock shall be transferred upon the books of any bank without the consent of a majority of the directors, while the registered holder is indebted to the bank.

For what purposes real estate may be held and conveyed.

241. SEC. 51. It shall be lawful for any such banking association to purchase, hold and convey real estate for the following purposes:

First—Such as shall be necessary for its immediate accommodation in the convenient transaction of its business.

Second—Such as shall be mortgaged to it in good faith, by way of security for loans previously made by, or moneys due to such association.

Third—Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth—Such as it shall purchase at sales under judgments, decrees or mortgages held by such association, but such association shall not bid at said sale a larger amount than is necessary to satisfy their debt and cost.

Conveyances of real estate to and by such association; how may be made.

242. SEC. 52. The said association shall not purchase, hold or convey real estate in any other case, or for any other purpose, and all conveyances of such real estate shall be made to such corporation or association in the name mentioned in the articles of association; and said association may sell and convey the same, free from any claim thereon against any of the stockholders, or any person claiming under them by an instrument under the hand and seal of president or vice-president and cashier of said association, duly acknowledged.

Declaration of dividends.

243. SEC. 53. The directors of each banking association shall semi-annually (or oftener as they may elect), on the first Monday in January and July, declare a dividend of so much of the net profits of the bank as they shall deem expedient, and on each of such days the president or cashier shall make a full, clear and accurate statement to the state treasurer of the condition of the bank as it shall be on that day, after declaring the dividend (if any be declared), which shall be verified by the oath of the president or cashier, and shall contain a full abstract of the

Statement to be made to state treasurer.

general accounts of the bank, so as to show plainly its resources and liabilities, and the amount of each kind thereof; and the same shall be published at least once a week, for three successive weeks, in some newspaper of the county where such bank is located, if any newspaper be published therein; if not, then in some newspaper of general circulation, published at the seat of government. Publication of statement.

244. SEC. 54. If any such banking association shall neglect to make out and transmit the statement required in the preceding section for one month beyond the period when the same is required to be made, or shall wilfully violate any of the provisions of this act, the directors shall be personally liable for all debts of said association contracted previous to and during the period of such neglect. Liability in case of failure to make statement.

245. SEC. 55. The officers and stockholders of every banking corporation or association formed under the provisions of this act shall be individually liable for all debts contracted during the term of their being officers or stockholders of such corporation, equally and ratably to the extent of their respective shares of stock in any such corporation or association, except that when any stockholder shall sell and transfer his stock, such liability shall cease at the expiration of one year from and after the date of such sale and transfer. Liability of officers and stockholders.

246. SEC. 56. The stockholders collectively of any bank shall at no time be liable to such bank, either as principal, debtors or sureties, or both, to an amount greater than two-fifths of the amount of the capital stock actually paid in, and remaining undiminished by losses or otherwise. Limit of collective liability of stockholders to bank.

SAVINGS BANKS.

247. SEC. 57. Any number of persons, not less than three, may associate together under the provisions of this act, with a capital of not less than twenty-five thousand (25,000) dollars, which capital shall be paid in cash, subject to all the restrictions and limitations of corporations, associations or banks heretofore provided for, as well as hereinafter contained, which said banks shall be known as "savings banks." Organization.

248. SEC. 58. The business and property of such sav-

Management of business and property.

ings banks shall be managed by a board of directors or trustees, of not less than three, all of whom shall be stockholders; the first board to be designated in the articles of association, who shall at their first meeting and as often as their by-laws shall require, elect from their number a president and vice-president, and elect or appoint such other officers or agents as they may deem expedient.

Receipt and payment of deposits.

249. SEC. 59. Said savings banks may receive on deposit all such sums of money as shall from time to time be offered by tradesmen, mechanics, laborers, servants, minors and others, for the purpose of safe keeping or being invested as may be authorized by this act, and all deposits in said banks shall be repaid to such depositors or his or her lawful representative when required at such time or times, and with such interest, and under such regulations as the board of directors or trustees shall from time to time prescribe, which regulations shall be printed and conspicuously exposed in some place accessible and visible to all in the business office of said banks, and no alteration which may at any time be made in the rules or regulations shall in any manner affect the rights of a depositor in respect to deposits or the interest thereon made previous to said alteration.

Disposition and investment of deposits.

250. SEC. 60. The board of directors or trustees may invest one-half of the deposits made with them upon personal security, or in the bonds, or stock of this state, or of the United States, or in the bonds of any county, city, town or school district in this state, legally authorized to issue such bonds, or loan the same upon bonds secured by mortgage upon unincumbered real estate, worth at least double the amount loaned, or in such other manner as is authorized by this act; and from the remainder of said deposits, temporary deposits may be made by said board in any national bank, or in any of the banks of this state, which may be incorporated under the general banking laws, said deposits not to exceed twenty-five thousand (25,000) dollars in any one bank: or they may keep the whole or any part of the said remainder to meet the current payments of such bank, and which may by them be kept on deposit, interest, or otherwise, or in such suitable form as the directors or trustees may direct. All certifi-

cates or evidences of deposit made by the proper officers of said banks shall be as effectual to bind the bank as if made under the common seal thereof.

Regulation and payment of interest.

251. SEC. 61. It shall be the duty of the directors or trustees, from time to time, to regulate the rate of interest to be allowed to depositors, and pay the same at regular and stated periods, and they may make such dividend or dividends from the surplus profits after the payment of, or after setting aside a sufficient amount to pay the interest to depositors of said banks, on the capital stock of said banks, after deducting the necessary expenses of said banks, and the directors or trustees of all savings banks formed under this act, shall, within thirty days from and after the date of incorporation of such banks, notify the state treasurer of the date aforesaid, and shall, on the first Monday in January, April, July and October of each year, make and file with the state treasurer, to be published in his report, a complete statement of the condition of said banks, specifying the character of the same, and such reports shall be published as required by section fifty-three (53) of this act.

Dividends, how made.

Quarterly report to be made to state treasurer and published.

Deposits of minors.

252. SEC. 62. When any deposit is made in any savings bank organized under this act, by a person being a minor, the said bank may pay to such depositor, such sums as may be due to him or her, although she or he have no guardian, and the receipt of such minor shall in all respects be valid in law.

Liability of officers and stockholders.

253. SEC. 63. The officers and stockholders of any savings bank organized under the provisions of this act, shall be subject to all the liabilities provided for in section fifty-five (55) of this act. Any savings bank or banking association formed under the provisions of this act, shall at all times hold, either in their own keeping, or on deposit (subject to call) with some national bank, or with other banks organized under general laws, at least twenty (20) per cent. of the savings deposits of such bank or association; and no part of the capital, deposits, investments or loans shall be divided among the stockholders until all the depositors shall be paid in full, or by depositing the remaining amount due such depositors with the state treas-

Twenty per cent of deposits to be retained in keeping or at call of bank.

No dividend to be made until depositors paid in full or amount due deposited with state treasurer.

Shares not to be taken as collateral security for loans.

urer for their benefit, and the shares of stock of any savings bank shall not be taken as collateral security for any loan made by the bank issuing the stock.

Officers and agents to give security.

254. SEC. 64. The subordinate officers and agents of said savings banks shall repectively give such security for their fidelity and good conduct, as the board of directors or trustees may from time to time require.

Banks not organized under law of state not permitted.

255. SEC. 65. No person or persons shall be permitted to carry on a private bank, not being organized under any law of this state or of the territory of Colorado.

Savings depositors of banks, preferred creditors.

256. SEC. 66. In case of the insolvency of any bank or association formed under the provisions of this act, the savings depositors thereof shall be entitled to preference in payment over all other creditors of said bank or association.

Loans or discounts to officers or clerks not permitted.

257. SEC. 67. No officer of a savings bank shall be a borrower, or surety for a borrower of any of its funds; nor shall any savings bank discount any paper made, accepted or indorsed by its cashier or any of its clerks, or by any partnership of which either is a member.

Dividends not to be declared except from net earnings.

258. SEC. 68. No banking association or corporation shall declare any dividend except from the net earnings, after deducting all losses, overdrafts and obligations, suspended or overdue, nor establish any branch office or agency thereof, or employ any agent or persons to make loans or discounts, at any other place than the banking house of such banking association.

Where all business shall be carried on.

Issue of notes, etc., for circulation as money not authorized.

259. SEC. 69. Nothing in this act shall be so construed as to authorize any corporation or association formed under the same, to issue notes, bills or other evidence of indebtedness, for circulation as money.

TRUST, DEPOSIT AND SECURITY ASSOCIATIONS.

Organization.

260. SEC. 70. Any number of persons, not less than three, may associate together, under this act for the purpose of carrying on a trust, deposit and security business, with power herein conferred.

Minimum of capital stock.

261. SEC. 71. The amount of capital stock in any such corporation shall be fixed and limited by the association, in their articles of association, and shall not be less than

fifty thousand (50,000) dollars, and shall be divided into shares of one hundred dollars each. When thirty thousand (30,000) dollars of stock shall have been subscribed for, and that amount actually paid in, any such association may organize and proceed to business under this act.

May commence business when thirty thousand dollars paid in.

262. SEC. 72. The persons so associating shall subscribe articles of association which shall contain:

What articles of association shall state.

First—The names of the associates and their places of residence respectively.

Second—The name by which the association shall be known, and the place where its principal office for the transaction of business is to be established.

Third—The purposes of the incorporation, as named in this act.

Fourth—The amount of capital stock actually paid in.

Fifth—The period for which such association is to be incorporated.

263. SEC. 73. The articles of association required by the last preceding section shall be recorded in the office of the secretary of state, and a copy filed in the office of the recorder of deeds of the county where the transactions of the business of such association is to be established.

Articles of association shall be recorded in office of secretary of state, and copy filed in office of county clerk.

264. SEC. 74. When any such association shall be formed under this act, any two of those associated may call the first meeting of the association at such time and place as they may appoint by giving proper notice thereof, at least ten days before the time appointed for such meeting.

How first meeting may be called.

265. SEC. 75. The stock, property and affairs of such association shall be managed by not less than three directors, to be elected as the by-laws of such association shall determine, and to hold their offices for the period of one year and until their successors shall be duly chosen. Said directors shall choose one of their number president, and they may elect or appoint such other officers or agents as they may deem expedient.

Directors and officers, how elected and chosen.

266. SEC. 76. Any association organized under this act shall have power, in and by its corporate name, to accept and execute any trust which may be created by instruments in writing, appointing such association trustees for any lawful purpose and to act as such trustees in all

Powers.

matters embraced in such trust, to take and receive from any individual or corporation, on deposit for safe keeping and storage, gold and silver plate, jewelry, money, stocks, securities, and other valuable personal property, and may have power to collect coupons, interest and dividends on said above described securities, and to rent out the use of safes, and other receptacles on the premises, upon such terms and for such compensation as may be agreed upon; to become security for administrators, guardians or other trustees or persons in cases where by law or otherwise one or more sureties are required, for a rate of compensation, and upon such terms and conditions as may be established by the directors of any such association.

May lease, hold, and convey real estate.

267. SEC. 77. It shall be lawful for any such association to lease, hold and convey all such real or personal estate as may be necessary to carry on its business, as well as such real or personal estate as it may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of its business transactions; execute and issue, in the transaction of its business, all necessary receipts, certificates and contracts, which shall be signed by such person or persons as may be designated by the by-laws of such association.

Receipts, etc., by whom to be signed.

Investment of capital.

268. SEC. 78. The board of directors of any such association are hereby authorized to invest the capital of said association, and to keep the same invested in good securities; and it shall be lawful for said association to make such investments of its capital, and of the funds accumulated by its business, or any part thereof, in bonds and mortgages on unincumbered real estate, within the state of Colorado, and also on any or all stocks or bonds of this state or any other state, or of the United States, or the bonds of any county, city, town or school district of this state, legally authorized to issue such bonds.

Liability of officers and stockholders.

269. SEC. 79. The officers and stockholders of any such association, formed under this act, shall be individually liable for all debts or obligations contracted during the time of their being officers or stockholders of such association, equally and ratably to the extent of their respective shares of stock in any such association.

TOLL ROADS.

270. SEC. 80. When any three or more persons shall associate to form a company for the purpose of constructing a wagon road, under the provisions of this act, their certificate of incorporation, in addition to the matters hereinbefore required to be stated therein, shall specify the termini of said road and the route of the same, as near as may be; and the said company shall have the right of way over the line named in the certificate, to erect toll gates not to exceed one in every ten miles of road, and to collect toll for such gate, either thereat or by a traveling toll gatherer at the rates prescribed by the county commissioners of the county in which said road is located, upon the application of such corporation: *Provided*, That whenever such corporation shall have constructed and completed one mile or more of roads by such corporation to be constructed, it shall be lawful for the county commissioners of the county in which the portion of road so constructed shall lie, to prescribe the rates of toll to be charged and collected by such corporation upon each mile of that portion of the road so constructed, and as other portions of the road to be constructed by such corporations shall be completed, the rates of toll shall be prescribed in manner aforesaid, and such corporations shall have power to collect tolls at the rates prescribed until such road be completed. When said road shall have been fully completed, the county commisioners of the county in which the same shall be located, shall prescribe the rates of toll such corporation shall be entitled to charge and collect, and such rates of toll shall remain in force and be collected from persons traveling such road for two years from the time of completing such road; and thereafter at the expiration of every two years, the county commissioners in each county through which said road passes may fix and regulate such rates of toll: *Provided, however*, that if said toll or wagon road company shall be dissatisfied with the rates of toll fixed by the county commissioners or tribunal transacting county business, said corporation or the owners of said toll or wagon road, may apply to the judge of the county court for the county or counties, or

Termini and route of road to be stated in articles of incorporation.

Collection and rates of toll.

County commissioners to prescribe rates of toll every two years after completion of road.

Proceedings on appeal from county commissioners, in respect to rates of toll.

either of them, in which said road shall be located, by petition, and the said judge shall forthwith appoint three disinterested persons to view the premises, hear such testimony as may be offered, and prescribe the rates of toll to be charged and collected on such road for the two years next ensuing, and such committee on oath shall report the same to the county court aforesaid at its first session thereafter, and if their report shall be accepted by the court, the court shall render judgment thereon, and the rates of toll shall be such as reported and accepted by said court, and in case any toll road company shall take an appeal from the decision of the county commissioners, the expense of such appeal shall be paid by the said toll road company:

No interference with acquired rights.

And provided further, that nothing in this act, shall be so construed as to authorize any corporation formed under the provision of this act, to locate their road, railroad, ditch or flume, or any part thereof, upon any toll road previously existing, nor upon any public highway, heretofore and at the time of the organization of such corporation used and traveled as such, except it may be necessary to cross such toll road or public highway; all such rates of toll shall be conspicuously posted at every gate upon said road.

Rates of toll to be conspicuously posted.

Toll not to be demanded or paid, unless road in good repair.

271. SEC. 81. No company formed under this act shall demand and receive toll whenever said wagon road is not in reasonably good repair, which fact is to be determined as herein provided. Any person having paid toll on said road and shall find the same in bad condition and unsafe to travel with loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the road is located, and it shall be the duty of said justice of the peace to summon the said company, or any agent of said company to appear before him in answer to said complaint, within five days from the date of said complaint, and if it be found that said road is in bad condition or unsafe to travel, it shall be the duty of said justice to impose a fine of not less than ten nor more than twenty-five dollars, to be collected from said company, one-half to be paid to the complainant and the other half to be paid into the school fund of the county in which the fine is collected, and said justice shall issue his order that no toll be collected upon

Manner of proceeding in case of complaint.

Penalty.

said road or upon any part thereof until it is put in good repair.

Rights acquired under certificate of incorporation to be forfeited unless work commenced within ninety days.

272. SEC. 82. Any corporation, organized under this act for the construction of a toll road, shall, within ninety days after its organization, commence work on said proposed road, and continue said work from day to day until at least five hundred dollars shall have been expended on such road, and in case of a failure to perform such work such corporation shall forfeit its right acquired under their certificate of incorporation.

Penalty for refusing to pay toll.

273. SEC. 83. Any person traveling upon any toll road and refusing to pay toll after such toll shall have been demanded by the regularly authorized toll gatherer, shall be subject to a fine in any sum not exceeding twenty dollars for such offense, the same to be collected before any justice of the peace in the county wherein such road is located.

DITCH COMPANIES.

What shall be stated in certificate of incorporation.

274. SEC. 84. Whenever any three or more persons associate, under the provisions of this act, to form a company for the purpose of constructing a ditch, for the purpose of conveying water to any mines, mills or lands, to be used for mining, milling or irrigating of lands, they shall, in their certificate, in addition to the matters required in section two (2) of this act, specify as follows: The stream or streams from which the water is to be taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch, as near as may be, and the use to which the said water is intended to be applied.

Rights and privileges.

275. SEC. 85. Any ditch company formed under the provisions of this act shall have the right of way over the line named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate, through their ditch: *Provided*, that the line proposed shall not interfere with any other ditch whose rights are prior to those acquired under this act and by virtue of said certificate, except the right to cross by flume; nor shall the water of any stream be diverted from its original channel to the detriment of any person or persons who may have priority of right.

Not to interfere with acquired rights.

When assessments on the capital stock may be made.

276. SEC. 86. Any corporation owning any ditch or canal for conveying, or reservoir for storing water for irrigating purposes and the capital stock being fully subscribed and paid up, and when such corporation shall have no income sufficient to keep its ditch, canal or reservoir in good repair, such corporation shall have power to make an assessment on the capital stock thereof, to be levied, *pro rata*, on all the shares of stock, payable in money, or labor, or both, for the purpose of keeping the property of such corporation in good repair, and for the payment of any claim against such corporation not otherwise provided for. But no such assessment shall be made unless the question of making such assessment shall first be submitted to the stockholders of such corporation, at an annual meeting, or at a special meeting called for that purpose, and a majority of the stockholders, either in person or by proxy, voting thereon, shall vote in favor of making such assessments; and an action may be maintained to recover any assessment against any delinquent shareholder, as provided in section five (5) of this act.

To be submitted to vote of stockholders.

Action for recovery of assessment.

Who preferred in use of water.

277. SEC. 87. Any company constructing a ditch under the provisions of this act, shall furnish water to the class of persons using the water in the way named in the certificate, in the way the water is designated to be used, whether miners, mill-men, farmers, or for domestic use, whenever they shall have water in their ditch unsold, and shall at all times give the preference to use of the water in said ditch to the class named in the certificate; the rates at which water shall be furnished to be fixed by the county commissioners, as soon as such ditch shall be completed and prepared to furnish water.

Rates of compensation to be fixed by county commissioners.

Escape of water to be prevented.

278. SEC. 88. Every ditch company organized under the provisions of this act, shall be required to keep their ditch in good condition, so that the water shall not be allowed to escape from the same to the injury of any mining claim, road, ditch, or other property; and whenever it is necessary to convey any ditch over, across, or above any lode or mining claim, or to keep the water so conveyed therefrom, the company shall, if necessary to keep the water of said ditch out, or from any claim, flume the

Ditch shall be flumed, if necessary.

ditch so far as necessary to protect such claim or property from the water of said ditch.

FLUME COMPANIES.

279. SEC. 89. When any company shall organize, under the provisions of this act, to form a company for the purpose of constructing a flume, their certificate, in addition to the matters required in the second section of this act, shall specify as follows: The place of beginning, the terminus, and the route so near as may be, and the purpose for which such flume is intended, and when organized, according to the provisions of this act, said company shall have the right of way over the line proposed in such certificate for such flume; *provided*, it does not conflict with the rights of any former fluming, ditching, or other company.

What shall be stated in certificate of incorporation.

Right of way not to conflict with rights of former companies.

BRIDGES AND FERRY COMPANIES.

280. SEC. 90. When three or more persons shall associate, under the provisions of this act, to form a company for the purpose of constructing a bridge, or establishing a ferry over any of the streams of water in this state, their certificate, in addition to the matters required in the second section of this act, shall specify as follows: The place where said bridge, or places at which such bridges or ferry is to be built or established, and on what streams, and that the banks on both sides of the stream where the said bridge or ferry is to be built or established are owned by said company, or that they have obtained in writing the consent of the owners of the banks where the said bridge is to be built, to erect the said bridge, or establish the said ferry as aforesaid, or that the banks at such place are a public highway.

What shall be stated in certificate of incorporation.

281. SEC. 91. Any bridge built or ferry established, under the provisions of this act, shall at all times be kept in good and safe condition for travel, both night and day, unless the same be rendered impassable by reason of flood or high water, and any bridge or ferry so built or established, shall, if destroyed by flood, fire, or other causes, be rebuilt or established within a period of nine months from

Forfeiture of rights unless bridge or ferry kept in good condition, or rebuilt within nine months after destruction

such destruction, or the rights acquired under this act shall be forfeited and cease to exist.

Rates of toll prescribed by county commissioners to be posted.

282. SEC. 92. The company, previous to receiving any toll upon said bridge or ferry, shall set up and keep in a conspicuous place on said bridge or ferry, a board, on which shall be written or printed in a plain, legible manner, the rates of toll which have been prescribed by the county commissioners of said county, and if any company shall demand or receive any greater rate of toll than the rate prescribed by said tribunal, then they shall be subject to a fine of ten dollars, and no company formed under the provisions of this act shall demand or receive toll whenever said bridge or ferry is not in good and safe condition for travel, and any person having paid toll on such bridge or ferry, and finding the same in a bad or unsafe condition for loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the bridge or ferry is located, who shall proceed as is provided in section eighty-one (81) of this act.

Penalty for demanding or receiving illegal toll.

Not to be demanded or paid unless bridge or ferry in good repair.

Proceedings in case of complaint.

MINING COMPANIES.

Powers.

283. SEC. 93. Any ore reducing, mining or tunneling company, organized under the provisions of this act, shall have the power to acquire, by purchase or otherwise, mining property, and work, mine, tunnel and develop the same, erect necessary buildings, mills, machinery and appliances, and purchase materials for the proper working thereof, and do any and all things necessary and requisite to carry into effect the objects for which they may be formed, as named in their certificate of organization. The certificate of incorporation of any such company, in addition to the other matters required in this act to be stated therein, shall contain a statement that the stock of such company is either assessable or non-assessable, and each certificate of stock issued by any such company shall have plainly printed on the face thereof the word "assessable" or "non-assessable" as the case may be.

What shall be stated in certificate of incorporation.

How certificates of stock to be printed,

When full paid stock liable to assessment.

284. SEC. 94. Any mining company, organized under the provisions of this act, may, for the purpose of purchasing mining property, and providing a capital for carrying on

the business of the company, issue full paid stock in payment of the same, which shall be non-assessable, until the balance or whole amount of the capital stock shall have been assessed to the par value thereof and fully paid, after which the stock shall all be equally and ratably liable to assessment for the operations of the company: *Provided, however*, any company may issue all its stock assessable or non-assessable, but no company shall issue both assessable and non-assessable stock, except as provided in this section.

Stock issued to be all either assessable or non-assessable

285. SEC. 95. The board of directors of any such company may make assessments upon the assessable stock of the company, but no single assessment shall exceed five (5) per cent. on the par value of said stock, and no such assessment shall be levied oftener than once in three (3) months. When the board of directors shall deem it necessary that assessments be made as aforesaid, they shall call a meeting of the stockholders, to be held at the principal office of the company, not less than thirty (30) days from the publication of such call; notice of such meeting shall be signed by the president or secretary of the company, and shall state the object of such meeting, and the time and place where the same will be held, and the same shall be published in some newspaper in the county where the operations of such company are carried on, if there be one, once each week for four (4) consecutive weeks, and also in some daily paper of general circulation at the place where the principal office of said company is located, if there be one, each day for thirty (30) days; the last publication to be at least ten (10) days before the time appointed for such meeting, and if there be no daily paper in the place where the principal office of the company is located, then the same shall be published in a weekly paper, if there be one, once each week for four consecutive weeks before the time for such meeting, and notice shall be personally served upon each stockholder, or in lieu of personal service, notice of such meeting shall be mailed to each stockholder, at his last known place of residence; and if at such meeting the stockholders representing a majority of the stock shall vote in favor thereof, the directors or trustees

Assessments, limit of, how often and in what manner levied.

Publication of notice, how to be made.

Personal service of notice.

When payment of assessment due.

shall make the assessments: *Provided*, that no assessment or assessments so authorized or any part thereof, as provided for in this section, shall be due and payable in less than thirty (30) days from the date of such assessment.

Proceedings in case of default of payment of assessment.

286. SEC. 96. If any assessment made as hereinbefore provided, or any part thereof, shall remain due and unpaid for fifteen (15) days after the same shall be due, interest may be charged thereafter upon the amount due, the shares of stock on which the same is due may be considered delinquent and in default, and the secretary of the company may advertise such shares for sale at public auction,

Publication of notice, how to be made, and what shall be stated in notice.

to the highest bidder for cash, by giving notice of such sale in some daily newspaper published at the place where the principal office of the company is located, if there is a daily paper published at such place, for ten (10) consecutive days, and if there be no daily paper, then in a weekly newspaper for two (2) weeks; said notice shall contain the numbers of the certificates of such stock, the number of shares, the amount of the assessment due and unpaid, and the time and place of sale; and in addition to the publication of the notice aforesaid, notice shall be personally served upon such delinquent stockholder in the manner as provided in section ninety-five (95) of this act, for personal notice to stockholders; and if the owner or owners of such stock shall fail to pay the amount due upon such shares, the interest upon the same and cost of advertising, before the time fixed for such sale, the secretary shall proceed to sell the same or such part thereof, as shall be necessary to pay such assessment, together with the interest and cost of advertising: *Provided*, that no fraction of a share shall be sold, and if the price for which the necessary share or shares shall be sold exceed the amount due with interest and cost, such excess shall be paid to the delinquent stockholder; and, *provided further*, that no sale of delinquent stock shall take place in less than sixty (60) days from the date the assessment was made.

Personal service of notice.

How delinquent stock is sold, and disposition of proceeds.

Directors, how elected.

287. SEC. 97. The stock, property and concerns of any company, organized under the provisions of this act, shall be managed by not less than three (3) nor more than nine (9) directors, who shall respectively be stockholders

in said company, and who shall, except the first year, be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such elections shall be published, not less than ten (10) days previous thereto, in a newspaper published in the place where the principal office of the company is located, if there be such a newspaper, and if not, by personal notice, as provided in section ninety-five (95) of this act; and the election shall be had by such of the stockholders as shall attend for that purpose, either in person or by proxy: *Provided*, a majority of the stock be represented. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he holds shares of stock in said company, and the persons receiving the greatest number of the votes cast, shall be elected.

Notice of election to be published.

Representation of stock at elections.

288. SEC. 98. Any ore reducing, mining or tunneling companies may consolidate under one organization, having all the rights and privileges of this act, and amenable to all its liabilities, by complying with all the requirements hereinafter provided.

Consolidation of companies authorized.

TELEGRAPH COMPANIES.

289. SEC. 99. Whenever any number of persons, organize under the provisions of this act, to form a company, for the purpose of constructing a line of magnetic telegraph in this state, their or his certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such company is hereby authorized to construct said telegraph line or lines from point to point along and upon any of the public roads, by the erection of the necessary fixtures, including posts, piers and abutments necessary for the wires: *Provided*, That the same shall not incommode the public in the use of said roads or highways.

What shall be stated in certificate of incorporation.

Use of roads and highways not to be obstructed.

290. SEC. 100. No such company shall have the right to erect any poles, posts, piers, abutments, wires or other fixtures of their lines along or upon any street, alley or other highway, or public ground, within any incorporated city or town, without the consent of the corporate authorities of such city or town. The consent herein required

Consent of corporate authorities to be obtained for erection in cities and towns, and recorded in office of county clerks.

must be in writing, and shall be recorded in the recorder's office of the county in which the city or town is located.

Power of corporate authorities to direct alterations, etc.

Any such city council or board of trustees of such city or town, as the case may be, shall have power to direct any alteration in the location or erection of any such poles, posts, piers or abutments, and also in the height of the wires, having first given the company or its agent opportunity to be heard in regard to such alteration.

Forfeiture of rights and franchises for neglect or refusal to receive or transmit dispatch.

291. SEC. 101. If any company owning or operating any line of telegraph in this state, shall refuse to receive any dispatch from any other company or person owning or operating any telegraph line in this state, or shall refuse or wilfully neglect to transmit the same in good faith, and without partiality, the company so offending shall forfeit all rights and franchises acquired under the laws of this state, and may be enjoined therefrom by bill of complaint filed in any court of competent jurisdiction, and be liable to pay all damages which shall accrue by reason of such refusal, to the company or person offering such dispatch for transmission.

May be enjoined; liable to pay damages.

Receipt and transmittal of messages.

292. SEC. 102. It shall be the duty of all persons employed in transmitting messages by telegraph, to transmit them in the order in which they are received, and any person who shall fail so to transmit a message, or who shall suppress a message, or who shall make known the contents of a messsage to any person other than the one to whom it is addressed, or his agent, shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, and said company shall be liable for all damages resulting therefrom.

Failure to transmit or suppressing messages; violation of secresy, penalty for.

Liability of company.

GAS COMPANIES.

Organization

293. SEC. 103. Any three or more persons may associate under the provisions of this act for the purpose of forming a company for the purpose of manufacturing illuminating gas for the supply of the inhabitants of any incorporated city or town, and lighting the streets thereof; the mayor and council of such incorporated city or town, are hereby empowered to authorize such incorporated company to excavate so much of the streets thereof as may be

necessary to lay down street pipes for conducting illuminating gas as well as for the repairs of said street pipes from time to time, under such regulations as the said mayor and council may deem adequate or proper. Excavation of streets to be regulated by corporate authorities.

294. SEC. 104. It shall be lawful for any corporation whose objects shall be to supply illuminating gas to any city or town, or the inhabitants thereof, to lease, purchase, hold and convey such coal lands within this state, as said corporation may deem necessary for the purpose of supplying their works with coal for the manufacture aforesaid, and said corporation shall also have power and is hereby authorized to sell coal known as coke, or the coal from which the illuminating gas shall have been extracted, as well as other coal from the mines owned by said company. May lease, purchase, hold, or convey coal lands, and sell coal and coke.

295. SEC. 105. The term of existence of every corporation authorized to be created for the purpose of manufacturing illuminating gas shall not exceed thirty years. Term of existence.

296. SEC. 106. Any company formed under the provisions of this act, for the purpose of constructing any ditch, flume, bridge, ferry or telegraph line, shall within ninety days from the date of their certificate, commence work on such ditch, flume, bridge, ferry or telegraph line, as shall be named in the certificate, and shall prosecute the work with due diligence until the same is completed, and the time of the completion of any such ditch, bridge, ferry, or telegraph line shall not be extended beyond a period of two years from the time work was commenced as aforesaid; and any company failing to commence work within ninety days from the date of the certificate, or failing to complete the same within two years from the time of commencement as aforesaid, shall forfeit all right to the water so claimed, and the same shall be subject to be claimed by any other company; the time for the completion of any flume constructed under the provisions of this act, shall not be extended beyond a period of four years; *provided*, this section shall not apply to any ditch or flume for mining or other purposes, constructed through and upon any grounds owned by the corporation; *and provided further*, that any company formed under the provisions of this act, to construct a ditch for domestic, agricultural, irrigating, milling, Ditch, flume, bridge, ferry or telegraph companies; limit of time for commencement and completion of work.

and manufacturing purposes, or any or either thereof, shall have three years from the time of commencing work thereon, within which to complete the same but no longer.

Wilful or malicious interference with property of corporations deemed misdemeanor.

297. SEC. 107. Any person who shall wilfully or maliciously damage or interfere with any road, ditch, flume, bridge, ferry, railroad or telegraph line, or any of the fixtures, tools, implements, appurtenances or any property of any company which may be organized under the provisions of this act, upon conviction thereof before any court of competent jurisdiction in the county where the offense shall have been committed, shall be deemed guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court, said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, which fine shall be paid into the county treasury for the use of common schools, and said offender shall also pay all damages that any such corporation may sustain, together with costs of suit.

Penalty.

Disposition of fine.

Offender to pay damages and costs.

RAILROADS.

Organization.

298. SEC. 108. Any number of persons, not less than five, may associate under the provisions of this act, to form a company for the purpose of constructing and operating a railroad. Their certificate of incorporation shall, in addition to the matter required in the second session [section] of this act, specify as follows:

What shall be stated in certficate of incorporation.

First—The places from and to which it is intended to construct the proposed railway.

Second—The time of the commencement and the period of the continuance of such proposed corporation.

Third—The names and places of residence of the several persons forming the association for incorporation.

Fourth—In what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

Duration of existence of railroad corporation

May be renewed

299. SEC. 109. No such corporation shall be formed to continue more than fifty years, in the first instance, but such corporation may be renewed from time to time, in such manner as may be provided by law, for periods not longer than fifty years.

300. SEC. 110. At all general meetings of the stockholders, those holding a majority in the value of the stock of any such corporation, may fix the rates of interest which shall be paid by the corporation for loans for the construction of such railway, and its appendages, and the amount of such loans.

Loans for construction, and rate of interest thereon; who may fix.

301. SEC. 111. Every such corporation, formed under this act, shall, in addition to the powers hereinbefore conferred, have power:

Rights and privileges.

First—To lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of the railway; and to cut down any standing trees that may be in danger of falling or obstructing the railway, making proper compensation therefor.

Second—To cross, intersect, or connect its railways with any other railway.

Third—To connect at the state line with railroads of other states and territories.

Fourth—To receive and convey persons and property on its railway.

Fifth—To erect and maintain all necessary and convenient buildings and stations, fixtures, and machinery, for the convenience, accommodation, and use of passengers, freights, and business interests, or which may be necessary for the construction or operation of said railway.

Sixth—To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor.

Seventh—From time to time borrow such sums of money as may be necessary for completing, finishing, [furnishing] improving, or operating any such railway, and to issue and dispose of its bonds, for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation, for the purposes aforesaid, in such manner as the shareholders representing a majority of the stock of any such corporation may direct.

302. SEC. 112. It shall be competent for any railroad

In what manner articles of association may be amended.

or telegraph company, or corporation, upon a vote in person or by proxy of two-thirds in value, of its stockholders, at any meeting thereof, to alter and amend its articles of association, so as to change its termini, or so as to extend the length of the line thereof from either of its termini to such further and other point as they may determine, or for the purpose of constructing branches from its main line, and upon such vote the said company may make articles amendatory of their original articles for the purpose of extending or changing the line of its road, or for constructing branches from its main line as aforesaid; and whenever any such company or corporation shall, by a vote of two-thirds in value of its stockholders, so determine to amend or alter their articles of association, and shall certify to such amendments or alterations, made as aforesaid, under the corporate seal of such company or corporation, attested by its president and secretary, and shall file such certificate in the office of the secretary of state, and also in the office of the recorder of deeds in the county wherein the principal business of each company may be carried on; such amendment, amendments, or alterations shall have the same force and effect as though said amendment or alteration had been included in and made a part of and embraced in its original articles of association.

When certificate thereof filed in offices of secretary of state and county clerk, amendments to, to have force and effect of original articles.

Corporate existence and power, to cease if construction not commenced and completed within certain time

303. SEC. 113. If any railway corporation, organized under this act, shall not, within two years after its articles of association shall be filed and recorded, as provided in the second section of this act, begin the construction of its road, and expend thereon twenty per cent. of the amount of its capital within five years after the date of its organization, its corporate existence and power shall cease.

How title to real estate may be acquired in case of disagreement with owner.

304. SEC. 114. If any corporation formed under this act for the purpose of constructing a road, ditch, bridge, ferry, tunnel, telegraph, or railroad company, shall be unable to agree with the owner for the purchase of any real estate required for the purposes of any such corporation or company, or the transaction of the business of the same, or for right of way, or any other lawful purpose, connected with, or necessary to, the operations of such company, such corporations may acquire such title in the manner provided by law.

305. SEC. 115. Any corporation formed under the provisions of this act, for the purpose of constructing a road, ditch, tunnel, or railroad, may cause such examination and survey as may be necessary to the selection of the most advantageous route, and for such purpose, by its officers, agents or servants, may enter upon the lands of any person or corporation, but subject to liability for all actual damages which shall be occasioned thereby.

Entry upon premises for examination and surveys, subject to liability for damages occasioned.

306. SEC. 116. No corporation shall issue stock or bonds except for labor done, services performed, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void.

For what purposes stock and bonds may be issued. Fictitious increase void.

307. SEC. 117. Upon dissolution by expiration of its charter or otherwise, of any corporation now existing or which may hereafter be formed, unless some other person or persons be appointed by some court of competent jurisdiction, the board of directors or trustees of such corporation or the managers of the corporate affairs, by whatever name known, acting last before the time of their dissolution, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same; to sue for and collect the debts and moneys due to the corporation, or to compound and settle any claims thereof, as they may deem best; to have, hold, reserve, sell and dispose of property, real and personal, of any such corporation dissolved; to adjust and pay all the debts of the corporation dissolved; to divide the residue of the moneys and property belonging to the corporation dissolved, after payment of debts and the necessary and reasonable expenses, among the stockholders holding stock in such corporation, in proportion to the amount paid upon stock, of each stockholder. All such trustees shall be jointly and severally liable to the creditors and stockholder[s] of such corporation dissolved, to the extent of the property and effects which shall come into their hands or possession of any of them, for a proper and faithful discharge of the duties of said trust and disposal of said property and effects.

Dissolution of corporations; powers and duties of trustees.

Liability of such trustees.

308. SEC. 118. The title to all real and personal estate

Dissolution of corporations; how title to real estate shall pass.

belonging to any such corporation, shall, immediately upon the dissolution thereof, unless by a decree of court of competent jurisdiction, declaring such dissolution, it is otherwise ordered, pass to, and rest in such trustees, directors, or managers, and an action at law may be maintained by such trustees, or directors, or the survivors of them, in their own names by the style of the trustees of such corporation dissolved, naming it, for the recovery of all such property, or of any damage done to the same, or for the recovery of any debts due such corporation dissolved.

How actions maintained.

Recovery of debts, dues and demands, from members of corporation.

309. SEC. 119. All bodies corporate, by the appropriate action, may sue for, recover and receive from their respective members, all arrears or other debts, dues and other demands, which are now, or hereafter may be owing to them, in like mode, manner and form, as they might sue for, recover and receive the same from any person who might not be one of their body, any law, usage or custom, to the contrary thereof notwithstanding.

How corporations may convey land.

310. SEC. 120. It shall be lawful for any corporation, to convey land, by deed, sealed with the common seal of said corporation, and signed by the president or the presiding member of said corporation; and such deed, when acknowledged by such officer to be the act of the corporation, prescribed for other conveyances for lands, shall be recorded in the recorder's office of the county where the land lies, in like manner with other deeds.

Formation of corporations under other acts prohibited.

311. SEC. 121. No corporation, association or society, for any purpose authorized by this act, shall be formed under any other act.

Changes in incorporations, or consolidations to be submitted to vote of stockholders at special meeting.

312. SEC. 122. That whenever the board of directors, managers, or trustees of any corporation existing by virtue of any general law of the territory of Colorado, or the laws of this state, or any corporation hereafter organized by virtue of any law of this state, may desire to change the name, to change the place of business, to increase or decrease the capital stock, to increase or decrease the number of directors, managers or trustees, or to consolidate said corporation with any other corporation or corporations now existing, or which may hereafter be organized, they may call a special meeting of the stockholders of such

corporation, for the purpose of submitting to a vote of the stockholders the question of such change of name, change of place of business, increase or decrease of number of directors, managers or trustees, increase or decrease of capital stock, or consolidation with some other corporation, as the case may be. *Provided,* that in changing the name of any corporation, under the provisions hereof, no name shall be assumed or adopted by any corporation similar to, or liable to be mistaken for, the name of any other corporation, organized under the laws of this state, or of the laws of the territory of Colorado, and that in no case shall the capital stock be diminished to the prejudice of the creditors of such corporation, or the number of directors, managers or trustees be reduced to less than three, (except in the cases of incorporation for the purpose of construction of railroad, to not less than five,) or increased to more than thirteen; *and provided further,* that the provisions of this act, in reference to the consolidation of corporations, shall only apply to corporations of the same kind, engaged in the same general business, and carrying on their business in the same vicinity.

Similarity of names to be avoided.

No dimunition of capital stock to prejudice of creditors.

Increase or reduction of number of directors, etc., limited.

What corporations may consolidate.

313. SEC. 123. Such special meeting shall be called by delivering personally, or depositing in the post-office, at least thirty days before the time fixed for such meeting, a notice properly addressed to each stockholder, signed by the president or secretary, stating the time and object of such meeting.

Special meeting, how called.

314. SEC. 124. At any such meeting, stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him; and votes representing two-thirds of all the stock of the corporation shall be necessary for the adoption of the proposed change of name or place of business, number of directors or trustees, amount of capital stock, or consolidation with some other company or companies.

Representation of stock at special meeting.

315. SEC. 125. Any corporation, existing for any of the purposes enumerated in this act, may consolidate by uniting the properties and concerns of two or more corporations in one organization, having all the rights and privileges of this act, and amenable to all its liabilities, by com-

Consolidation; how effected.

plying with all the requirements herein provided, to wit: Each corporation desiring to consolidate, each with the other, may, by its trustees or directors, or by the stockholders representing a majority of the stock, call a meeting of the stockholders, as provided in section ninety-five of this act, and vote upon the proposition of consolidation that shall be presented, in writing, at such meeting, when, if by a vote of at least three-fourths (¾) of the stock of each company severally, the proposition shall be approved, the trustees or directors shall thereupon elect their proportion of the directors, less one, that are to manage the affairs of the consolidated company, and upon the joint meeting of the directors so elected, the said directors shall elect one of the stockholders to be a director and act with them, and they jointly shall constitute a board of directors, who shall organize by electing their officers in accordance with law. They shall prepare a certificate of incorporation setting forth the facts of consolidation, together with all other matters required in original certificates of incorporation, naming therein the directors elected as herein provided, who shall serve for one year, and until their successors are elected; and the said certificate of incorporation shall be signed and acknowledged by at least three of the stockholders of each of the consolidating companies. The certificate so signed and acknowledged shall be filed for record in the office of the secretary of state, and in each of the offices of the county recorders where the certificate of either of the companies so consolidated are on file. The trustees or directors of the consolidating companies, shall, each by proper conveyance, convey to the consolidated company the property and effects of such companies, and shall deposit with the directors of the consolidated company all the transfer books, seals, books and papers of each of the companies so uniting. The directors of the consolidated corporation shall call in all the stock of each of the companies forming a part of the consolidation, cancel the same, and issue in lieu thereof the stock of the new organization in proportion of value of the old to the new as provided in the plan of consolidation: *Provided,* no stock shall be issued in lieu of old stock except upon the presentation of the old stock or due proof

To be submitted to vote of stockholders.

How new directors elected

Certificate of incorporation; what shall be set forth in, and where filed and recorded.

Transfer of property and effects.

Issue of stock of new organizations.

of the loss or destruction of the old certificates of stock, and then only to the parties entitled thereto. When the companies have consolidated as herein provided, the stock of the companies so consolidated shall thereafter represent only its interest in the new organization, whether surrendered and exchanged or not, and shall be subject to all the liabilities of assessment and forfeiture that may pertain to the stock of the consolidated company, and the consolidated company shall be responsible for and shall assume and pay all the just liabilities of each of the companies so consolidated; and any corporation desiring to change its name, place of business, number of directors or trustees, or amount of capital stock shall submit the question at an annual meeting, or a special meeting, called for that purpose, in accordance with the provisions of section 95 of this act. If, at any such meeting, three-fourths of all the stock of such corporation shall vote in favor of the proposed change, or changes, a certificate setting forth the fact, or facts, verified by the affidavit of the president of said corporation, and having the seal of the corporation affixed, shall be filed for record with the secretary of state and the recorder of the county where the principal business office of said corporation is located.

Liability of consolidated corporations.

316. SEC. 126. Such corporations shall, upon the filing of said certificates, cause to be published in some newspaper, in or nearest the county in which their principal office is located, a notice of such changes of organization, for three successive weeks.

Notice of changes of organization to be published.

317. SEC. 127. Such change of name, place of business, increase or decrease of capital stock, increase or decrease of number of directors, managers or trustees, or consolidation of one corporation with another or with others, shall not affect suits pending in which such corporation or corporations shall be parties; nor shall such change affect causes of action, nor the rights of persons in any particular: nor, shall suits brought against such corporation by its former name, be abated.

Consolidation or change of organization not to effect abatement of action, etc.

318. SEC. 128. Whenever any railroad or telegraph company shall desire to consolidate with any other railroad or telegraph corporation, by virtue of the provisions of this

Consolidation of railroad and telegraph companies; what notice to be given and published.

act, a notice, as provided by section one hundred and twenty-three (123) of this act, shall be given at least thirty days before the time fixed for such meeting, and a general notice, as provided in section one hundred and twenty-three (123) shall be published for four successive weeks, provided that no railroad or telegraph company, or the lessees or managers thereof, shall consolidate its stock, property or franchise, with any other railroad or telegraph company or companies, having under its or their control a parallel or competing line of railroad or telegraph.

Classification of directors, etc

319. SEC. 129. At any meeting of the stockholders of any railroad corporation, heretofore or hereafter formed under the laws of the territory of Colorado, or of this state, for the election of directors, managers or trustees, the stockholders may classify the directors in three equal classes, as near as may be, one of which classes shall hold their office for one year, one for two years, and one for three years, and until their successors are respectively elected; and at all subsequent elections, in the event such classification shall be made, directors shall be elected for three years, to fill the places made vacant by the class whose term of office shall expire at that time.

How corporations heretofore organized may avail themselves of the provisions of this act.

320. SEC. 130. Any corporation, company, or body politic, heretofore formed or organized and existing under any special act of the legislative assembly of the Territory of Colorado, or under any of the general laws thereof, may come under, and avail themselves of the privileges and provisions of this act, whenever any such company, corporation, or body politic, shall file in the office of the secretary of state, and in the office of the recorder of deeds in the county or counties where such company, corporation, or body politic is doing business, a certificate in writing, signed by the president, and attested by the secretary of such company, corporation, or body politic, accepting the provisions of this act, and the questions of acceptance shall be adopted by a vote of two-thirds of all the stockholders of said company, corporation, or body politic, expressed at a regular meeting of such company, corporation or body politic, or at a meeting held for that purpose, which certificate shall express such vote.

Amendment or repeal of this act.

321. SEC. 131. The general assembly, may, at any time, alter, amend, or repeal, this act, and shall at all times have power to prescribe such regulations and provisions, as it may deem advisable, which regulations and provisions, shall be binding on any, and all corporations formed under the provisions of this act; *And, provided further*, that this act shall not be held to revive or extend any private charter or law, heretofore granted or passed, concerning any corporation.

Rights or liabilities of former corporations not to be lessened or impaired.

322. SEC. 132. The provisions of this act, shall not in any manner, impair the rights, or lessen the liabilities of corporations now in existence, and heretofore created under the laws of the Territory of Colorado; but such corporations are hereby recognized, and their incorporation confirmed; but nothing in this section shall be so construed as to relieve such corporations from hereafter complying with provisions of this act, in all matters relating to the conduct, control and management of any such corporations or any of the affairs of any such corporation.

Provisions of this act in regard to conduct, control, and management of companies to be complied with.

Approved, March 14, 1877.

CHAPTER XX.

COSTS.

[Revised Statutes, Chapter XIX.]

Bond for costs to be given in certain cases.

323. SECTION 1. In all actions on office bonds for the use of any person, actions on the bonds of executors, administrators, or guardians, *qui tam* actions on any penal statute, and in all cases in law and equity where the plaintiff, or the person for whose use an action is to be commenced, shall not be a resident of this state, the person or plaintiff for whose use the action is to be commenced, shall, before he institutes such suit, file or cause to be filed with the clerk of the court in which the action is to be commenced, an instrument in writing, of some responsible person, being a resident of this state, to be approved by the clerk, whereby such person shall acknowledge himself bound to pay, or cause to be paid, all costs which may

accrue in such action, either to the opposite party or to any of the officers of such court; which instrument may be in form as follows:

Form of bond.

A. B.
vs. } —— Court.
C. D.

I do hereby enter myself security for costs in this case, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, pursuant to the laws of this state.

Dated this —— day of ——, 18—. ——.

Dismissal of action for failure to file bond for costs; plaintiff's attorney to pay costs.

324. SEC. 2. If any such action shall be commenced, without filing such instrument of writing, the court, on motion, shall dismiss the same, and the attorney for the plaintiff shall pay all costs accruing thereon; and if at any time after the commencement of any suit by a resident of this state, he shall become non-resident, or if in any case the court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court, with respect to their legal demands, it shall be the duty of the court, on motion of the defendant, or any officer of the court, to rule the plaintiff, on or before the day in such rule named, to give security for the payment of costs in such suit; if such plaintiff shall neglect or refuse, on or before the day in such rule named, to file such instrument as aforesaid, the court shall, on motion, dismiss the suit.

In what cases bond required after commencement of action.

Poor person may prosecute action without payment of costs.

325. SEC. 3. If any court shall, before or after the commencement of any suit, be satisfied that the plaintiff is a poor person, and unable to prosecute his or her suit, and pay the costs and expenses thereof, they may in their discretion permit him to commence and prosecute his action as a poor person; and thereupon such person shall have the necessary writs, process, and proceedings, as in other cases, without charge; and if the plaintiff recover judgment, there shall be a judgment for his costs.

326. SEC. 4. If any person shall sue in any court in this state in any action, real, personal or mixed, or upon

any statute for any offense or wrong immediately personal to the plaintiff, and shall recover any debt or damages in such action, then the plaintiff or demandant shall have judgment to recover against the defendant his costs to be taxed; and the same shall be recovered, together with the debt or damages, by execution, except in the cases hereinafter mentioned.

Person recovering judgment, to have judgment for costs.

327. SEC. 5. If any person shall sue in any court of record in this state, in any action wherein the plaintiff or demandant might have costs in case judgment be given for him, and he be non-prossed, or suffer a discontinuance, or be nonsuited after appearance of the defendant, or a verdict pass against him, then the defendant shall have judgment to recover his costs against the plaintiff, (except against executors or administrators prosecuting in the right of their testator or intestate,) or demandant, to be taxed; and the same shall be recovered of the plaintiff or demandant, by like process as the plaintiff or demandant might have had against the defendant, in case judgment had been given for the plaintiff or demandant.

Judgment for recovery of costs against plaintiff; in what cases.

328. SEC. 6. Any person making justification or cognizance in replevin, if the same be found for him, or the plaintiff be non-suited or non-prossed, suffer discontinuance, or be otherwise barred, then such person shall recover his damages and costs against the plaintiff.

When costs recovered by defendant in action of replevin.

329. SEC. 7. If in any action, judgment upon any demurrer by either party to the action shall be given against the plaintiff, the defendant shall recover costs against the plaintiff; if such judgment be given for the plaintiff, he shall recover costs against the defendant.

Costs in judgment upon demurrer; who shall recover.

330. SEC. 8. When any defendant in any action, or plaintiff in replevin, shall plead several matters, and any of such matters upon demurrer joined shall be adjudged insufficient, or if a verdict shall be found in any issue of the cause for the plaintiff, costs shall be given at the discretion of the court.

When costs given at discretion of the court.

331. SEC. 9. Where there are several counts in any declaration, and any of them be adjudged insufficient, or a verdict on any issue joined thereon shall be found for the defendant, costs shall be awarded in the discretion of the court.

Recovery of costs by persons acquitted by verdict in certain cases.

332. SEC. 10. Where several persons are made defendants to any action of trespass, assault, false imprisonment, detinue, replevin, trover or ejectment, and any one or more of them shall upon trial be acquitted by verdict, every person so acquitted shall recover his costs of suit in like manner as if such verdict or acquittal had been given in favor of the defendant.

Costs in judgment upon writ of *scire facias* or prohibition; who shall recover.

333. SEC. 11. In all suits upon any writ of *scire facias* or upon prohibition, the plaintiff obtaining judgment or an award of execution after plea pleaded or demurrer joined therein, shall recover his costs of suit; if the plaintiff shall be non-suited or non-prossed or suffer a discontinuance or a verdict shall pass against him, the defendant shall recover his costs.

When fees of more than four witnesses may be taxed in district court.

334. SEC. 12. In no case in the district court shall the fees of more than four witnesses be taxed against the party against whom judgment shall be given for costs, unless the court shall certify on their minutes that more than four witnesses were really necessary, in which case the clerk shall tax the costs of as many witnesses as the court shall so certify.

Defendant has judgment for costs, in actions dismissed for irregularity, etc.

335. SEC. 13. In all cases where any action shall be dismissed for irregularity, or be non-prossed or non-suited by reason that the plaintiff neglects to prosecute the same, the defendant shall have judgment for his costs.

Costs on dismissal of bill in equity; who shall recover.

336. SEC. 14. Upon the complainant dismissing his bill in equity, or the defendant dismissing the same for want of prosecution, the defendant shall recover against the complainant full costs; and in all other cases in chancery not otherwise directed by law, it shall be in the discretion of the court to award costs or not.

Costs in suit commenced by one person to use of another.

337. SEC. 15. When any suit shall be commenced in the name of one person to the use of another, the person to whose use the action is brought shall be held liable and bound for the payment of all costs which the plaintiff may be adjudged or bound to pay, to be recovered by action on the case.

Costs in cases of *certiorari* or appeal from justices of the peace

338. SEC. 16. In all cases of appeal or *certiorari*, upon the judgments of justices of the peace, when the judgment of the justice of the peace shall be wholly affirmed or

reversed, the party succeeding shall recover from the opposite party his costs, not only in the district court, but before the justice; where the judgment of the justice shall be affirmed in part, then the court shall divide the costs between the parties, according to the justice of the case.

Costs on appeal from court of probate.

339. SEC. 17. In all cases of appeal from the decision of a court of probate, the costs shall be in the discretion of the court in which such appeal is heard.

Costs on writ of error or appeal to supreme court from district court.

340. SEC. 18. If any person shall sue out a writ of error or take an appeal to the supreme court to review a judgment of the district court, and the same be affirmed, or the writ of error be discontinued or quashed, or the plaintiff in error or appellant be nonsuited, the defendant or appellee shall recover his costs.

Clerk to tax costs

341. SEC. 19. The clerk of any court in the state is hereby authorized and required to tax and subscribe all bills of costs arising in any cause or proceeding in the court of which he is clerk, agreeable to the rates which shall for the time being be allowed or specified by law.

In cases of erroneous taxation, courts may re-tax upon application.

342. SEC. 20. If any person shall feel himself aggrieved, by the taxation of any bill of costs, he may apply to the court to have the same re-taxed, and if it shall appear that the party aggrieved has paid any higher charge than by law is allowed, the court may order that the clerk shall forfeit all fees allowed to him for taxation, and pay to the party aggrieved the whole amount which he may have paid by reason of the allowing of any unlawful charge.

Clerk shall repay unlawful charge and forfeit fees for taxation.

(Amendment of 1874.)

Fee bill to be made against party adjudged to pay costs and surety on bond.

343. SEC. 21. The clerk shall make out a bill of costs as the same have been taxed in any cause against the party liable to pay the same and his security for costs, if any, together with his precept, directed to the sheriff of the proper county, commanding that if the costs in the said bill of costs mentioned be not paid within thirty days after demand made therefor, he cause the same to be levied if [of] the goods and chattels, lands and tenements, of the party so liable therefor, and his security, if any named therein. Every such fee bill shall run in the name of the people, shall be under the seal of the court, and shall be returnable within ninety days from the date thereof, and the

Proceedings thereon and when returnable.

sheriff shall proceed thereon in all things as on a writ of *fieri facias.*

AN ACT RELATING TO COSTS IN CRIMINAL CASES.

[Session Laws. 1872.]

Costs to be taxed against person making malicious complaint to grand jury.

344. SECTION 1. If any person shall complain to any grand jury, of injury done to his person, or to any person of his household, or to his property, done by another, and upon hearing evidence of such charge it shall appear to such grand jury that the same is untrue, and that it was maliciously entered, it shall be the duty of such grand jury, to return the facts into court, and the court shall thereupon tax the costs incurred in the investigation of such charge, and enter judgment against the person who made such complaint for the amount thereof. In proceedings under this section, the action of the grand jury shall be determined by twelve members thereof.

When judgment for costs shall be given against prosecuting witness.

345. SEC. 2. If any person shall complain to any grand jury of injury done to his person, or to any person of his household, or to his property, and after indictment found shall not appear in the court in which such indictment shall be pending to give evidence in that behalf against the party charged in such indictment, and the party charged shall be acquitted; or if proceedings under said indictment shall be discontinued for want of testimony, the court in which said indictment shall be pending shall give judgment against the person who preferred such complaint for the costs arising in that case. Upon the trial of the party charged in any such indictment, if he shall be acquitted, and the jury shall find that the proceeding was maliciously commenced, the court shall give judgment against the prosecuting witness, for the costs arising in the case. Whenever any person shall complain, as in the first clause of this section mentioned, the grand jury shall cause the name of the person so complaining to be indorsed upon the indictment, with the words "prosecuting witness" added, and this shall be evidence that the complaint was made by the person whose name is thus indorsed.

Name of prosecuting witness to be endorsed on indictment.

346. SEC. 3. Judgment rendered under the provisions of this act may be enforced in the same manner as in other criminal cases.

AN ACT CONCERNING COSTS IN CRIMINAL EXAMINATIONS BEFORE JUSTICES OF THE PEACE.

[Session Laws, 1872.]

347. SECTION 1. In all cases of examination into any criminal charge, before a justice of the peace, where the party accused shall be discharged, and it shall appear to the justice before whom such examination was made, that there was no reasonable ground for the complaint, and that it was maliciously entered, and in all such cases, where the complaining witness wilfully absents himself from, or fails to appear, at such examination, the justice of the peace is hereby authorized to give judgment against the complainant for the costs of such examination, and issue execution thereon.

Costs in malicious complaint before justice of the peace.

AN ACT CONCERNING COSTS IN CRIMINAL CASES.

[Session Laws, 1876.]

348. SECTION 1. The costs in criminal cases shall be paid by the county in which the offense is committed, when the defendant shall be convicted and shall be unable to pay them. In all cases in which the defendant is acquitted, the costs shall be paid by the county in which the offense was committed, unless the prosecutor shall be adjudged to pay them; and the county commissioners of any county may, in their discretion, pay the costs of preliminary examinations, except in cases of preliminary examinations in which the prosecutor shall have been adjudged liable to pay the costs.

By whom costs in criminal cases paid.

AN ACT CONCERNING COSTS IN CERTAIN CASES.

[Session Laws, 1876.]

349. SECTION 1. In all cases hereafter tried, where any person or persons has made, or shall hereafter make,

Costs in cases of adverse claim to mining property.

application for a patent to any lode, claim, placer claim, mill site, or other mining property, under and in pursuance of the mining laws of the United States, and any other person or persons claiming adversely to such applicant has filed, or shall hereafter file, an adverse claim in the proper land office, and has brought, or shall hereafter bring, suit or suits, either at law or in equity, for the purpose of determining the title, or right of possession, to such mining property, or any part thereof, if such adverse claimant, being plaintiff in such suit or suits, shall prevail so as to recover costs therein, he shall also recover and be entitled to tax as a part of his said costs, all disbursements and expense necessarily incurred and paid by him for plats, abstracts, and copies of papers filed in said land office with his adverse claim, and also a reasonable counsel fee, not exceeding fifty dollars in any case, for the expense of preparing his said adverse claim.

Section 2, of this act, repealed 1877.

CHAPTER XXI.

COUNTIES AND COUNTY BOUNDARIES.

[Revised Statutes, Chapter XX.]

Boundaries of counties.

350. SECTION 1. The following shall be the boundaries of the respective counties of this state.

Costilla.

351. SEC. 2. Costilla county: commencing at a point on the southern boundary of the state, where the range line between ranges sixty-nine and seventy, intersects said boundary: thence north along said range line to the point where the same intersects the Sangre de Christo pass or road; thence in a southwesterly direction on said road, to the summit of the Sangre de Christo range; thence in a northerly and westerly direction along the summit of said range to the head of the main branch of the Mosco creek; thence in a southwesterly direction down the centre of said Mosco creek to where said creek enters into the San Luis valley; thence in a westerly direction to the most easterly point of La Loma del Norte; thence down the centre of

the Rio Grande del Norte to the southern boundary of the state; thence east, along said boundary to the place of beginning.

352. SEC. 3. Saguache county: commencing at the most easterly point of La Loma del Norte; thence in an easterly direction to the point where the Mosco creek enters into the San Luis valley; thence up the centre of said creek to the boundary line of Fremont county, on the summit of the Sangre de Christo range; thence in a northwesterly direction along the summit of said range to the top of the range at the Poncho pass; thence in a direct line west to the one hundred and seventh degree of longitude; thence south, following said degree, to the north boundary line of Conejos county; thence east along the north boundary line of Conejos county, to where it intersects the southwest boundary of Saguache county; thence on a produced southeasterly line to the mouth of the canon of the snowy range, from whence flows the Rio Grande del Norte; thence down the centre of said stream to the place of beginning. (Amendment of 1872.) Sagauche.

353. SEC. 4. Conejos county: commencing on the southern boundary of the state, in the centre of the Rio Grande del Norte; thence up the centre of said stream to where it leaves the canon of the snowy range at the corner of Saguache county; thence in a northwesterly direction along the western boundary of said Saguache county to the Co-che-to-pa pass; thence in a southwesterly direction on the summit of the Uncompaghre mountains and the Sierra La Plata, forming the southern boundary of Lake county, to the western line of the state; thence along the western boundary of the state to its southwest corner; thence along the southern boundary of the state to the place of beginning. Conejos.

354. SEC. 5. Huerfano county: commencing at a point where the township line between townships twenty-one and twenty-two south, intersects the western boundary of the Indian reserve; thence west on said township line to the point where said line intersects the range line between ranges sixty-two and sixty-three; thence south, on said range line six miles to the township line between town- Huerfano.

ships twenty-two and twenty-three south; thence west, on said township line to the point where said line if continued, would intersect range line between ranges sixty-nine and seventy; thence south to latitude thirty-seven degrees thirty minutes; thence east on said parallel, to the eastern boundary of the state; thence north to the second correction line; thence west to where said line intersects the Indian reserve; thence in a southeasterly direction following the line of the Indian reserve to the southeast corner of said reserve; thence westerly, along the southern boundary of said reserve to the south west corner thereof; thence north to the place of beginning.

Pueblo.

355. SEC. 6. Pueblo county: commencing at a point where the township line between townships seventeen and eighteen south intersects the western boundary of the Indian reserve; thence west on said township line to the point where the same is intersected by the range line between ranges sixty-seven and sixty-eight; thence south on said range line to the township line between townships twenty-two and twenty-three; thence east on said township line to the range line between ranges sixty-two and sixty-three; thence north on said range line to the township line between townships twenty-one and twenty-two; thence on said township line to the western boundary of the Indian reserve; thence north on said western boundary to the place of beginning.

Fremont.

356. SEC. 7. Fremont county: commencing at the point in the centre of range sixty-nine, where the centre line of said range intersects township line between townships twenty-two and twenty-three; thence east on said township line nine miles to the range line between ranges sixty-seven and sixty-eight; thence north on said range line to the third correction line south; thence west on said correction line to the point where the same if continued would intersect the Arkansas river; thence due south to the summit of the snowy range; thence along said range to the Sangre de Christo pass or road; thence along said road or pass to where said road intersects the line between ranges sixty-nine and seventy; thence north to the point where the said range line intersects township line between townships twenty-two and

twenty-three south; thence east along said township line to the place of beginning.

357. SEC. 8. Las Animas county: all that portion of the state lying south of latitude thirty-seven degrees thirty minutes, and east of the westernmost line of Huerfano county, produced to the southern boundary of the state. Las Animas.

358. SEC. 9. El Paso county: commencing at the junction of the second correction line south with the western boundary of the Indian reserve; thence due west on said correction line to the Platte river on the eastern edge of the South Park; thence due south to the third correction line south; thence east to the range line between ranges sixty-seven and sixty-eight; thence due south on said range line to the south line of township seventeen south; thence east to the western boundary of the Indian reserve; thence north to the place of beginning. El Paso.

359. SEC. 10. Douglas county: commencing at a point where the range line between ranges sixty-eight and sixty-nine intersects the first correction line south; thence east on said correction line to the eastern boundary of the state; thence south on said boundary line to the second correction line, south; thence west on said correction line to where said line intersects the line of the Indian reserve; thence along the boundary of said reserve to the point where the western boundary of said reserve intersects the second correction line, south; thence west on said correction line to the Platte river; thence down the centre of said river to the point where said river intersects the first correction line, south; thence east to the place of beginning. Douglas.

360. SEC. 11. Arapahoe county: commencing at a point on the base line where the range line between the ranges sixty-eight and sixty-nine intersects said base line; thence south on said line to where said line intersects the first correction line south; thence east to the eastern boundary of the state; thence north on said eastern boundary to the base line; thence west to the place of beginning. Arapahoe.

361. SEC. 12. Weld county: commencing at a point where the range line between the ranges sixty-eight and sixty-nine intersects the base line; thence north to the Weld.

township line between townships four and five, north; thence east on said township line to the range line between ranges sixty-seven and sixty-eight; thence north to the north line of the state; thence east on said north line of the state to the eastern boundary of the state; thence south on said boundary to the base line; thence west on said base line to the place of beginning.

Larimer. 362. SEC. 13. Larimer county: commencing at a point where the township line between townships four and five, north, intersects the range line between ranges sixty-seven and sixty-eight, running west six miles; thence south six miles to the township line between townships three and four, north; thence west along the northern boundary of Boulder county to the summit of the snowy range; thence in a northerly direction on said summit to the northern boundary of the state; thence east on said northern boundary to the range line between ranges sixty-seven and sixty-eight; thence south to the place of beginning.

Boulder 363. SEC. 14. Boulder county: commencing at a point where the township line between townships one and two, south, intersects the range line between ranges sixty-eight and sixty-nine; thence west on said township line to the east line of Gilpin county; thence along said line to the South Boulder creek; thence west along the northern boundary of Gilpin county to the summit of the snowy range; thence along the summit of first range to a point at or near the summit of Long's Peak; thence east on said township line to the range line between ranges sixty-eight and sixty-nine; thence south to the place of beginning.

Jefferson. 364. SEC. 15. Jefferson county: commencing at a point where the township line between townships one and two, south, intersects the range line between ranges sixty-eight and sixty-nine; thence due west twenty miles; thence due south to the junction of North and South Clear creeks; thence south to the Platte river; thence down the centre of said Platte river to the point where said river intersects the first correction line; thence east to the point where said first correction line intersects the range line between ranges sixty-eight and sixty-nine; thence north to the place of beginning.

365. SEC. 16. Clear Creek county: commencing at the junction of the North and South Clear creeks, thence up the dividing ridge between said streams, to the summit of the snowy range; thence along said summit to the point where the first correction line, south, if continued, would intersect said summit; thence east on said correction line to the western boundary of the county of Jefferson; thence north to the place of beginning. Clear Creek.

366. SEC. 17. Gilpin county: commencing at the junction of the North and South Clear creeks; thence north to the South Boulder creek; thence up the channel of said creek to a point where Beaver creek unites with Boulder creek; thence in a line due west to the summit of the snowy range; thence south on said summit to the northern boundary of Clear Creek county; thence in an easterly direction with said northern boundary to the place of beginning. Gilpin.

367. SEC. 18. Park county: commencing at a point where the second correction line, south, intersects the Platte river; thence south to the third correction line, south; thence west to the summit of the snowy range, east of the Arkansas river; thence in a northerly direction along the divide between the Arkansas and Platte rivers, and around the head waters of the Platte river and its branches; thence easterly along the snowy range dividing the waters of the Platte from the waters of the Blue, to the point of intersection with the first correction line, south; thence east on said correction line to the western boundary of Jefferson county; thence south on said boundary to the Platte river; thence up the centre of said river to the place of beginning. Park.

368. SEC. 19. Lake county: commencing at a point on the summit of the snowy range, at the northwest corner of the county of Park, and running due west to the western boundary of the state; thence south, on said boundary, to the summit of the Sierra La Plata, or the northwest corner of Conejos county; thence easterly along the northern boundary of Conejos county to the one hundred and seventh degree of longitude; thence north, following said degree, to the northwest corner of Saguache county; thence (Amendment of 1872.) Lake.

east, along the north boundary of Saguache county to the top of the range at the Poncho pass; thence northeasterly along the summit of the range, crossing the Arkansas river, at a point three miles below the mouth of the South Arkansas river; thence easterly to the summit of the range which divides the waters of the Platte and Arkansas rivers, along the summit of the range and western boundaries of the counties of Fremont and Park, in a northwesterly direction to the point of beginning.

Summit.

369. SEC. 20. Summit county: all that portion of the state bounded on the south by the county of Lake, and on the east by the summit of the snowy range, and on the north and west by the state boundary.

Location of county seat.

370. SEC. 21. It is further provided that the people may locate permanently the county seat in any part of the county, by a vote of the majority of the legal voters in each county according to law.

Election for location of county seat.

371. SEC. 22. Whenever any county shall be organized hereafter, the qualified voters thereof, are hereby empowered to select the place of their county seat, by a vote, at the first election held in the county for the choice of county officers. For that purpose each voter may designate on his ballot the place of his choice for the county seat; and when the votes are canvassed the place having a majority of all the votes polled, shall be the county seat; and public notice of said location shall be given within thirty days, by the county commissioners, by posting up notices in three public places in the county.

Laying out of county seat, etc.

372. SEC. 23. The aforesaid county commissioners shall have power to make all needed arrangments for having such county seat surveyed into lots, squares, streets and alleys, selling and disposing of the same, erecting a jail house, court house or other county buildings, as to them may seem best.

AN ACT TO CHANGE THE BOUNDARIES OF THE COUNTIES OF PUEBLO, HUERFANO AND LAS ANIMAS.

[Approved January 9, 1868.]

373. SECTION 1. The boundaries of the county of Pueblo shall be as follows, to wit: commencing at a point on

the western boundary line of said county, as heretofore constituted, where the fourth correction line, south, crosses the western boundary of said county, thence running due west six miles; thence due south to the summit of the Greenhorn range of mountains; thence southward along said range of mountains to the summit of the Cuerno Verde peak; thence northeast in a straight line to the Corral de Toros on the Huerfano river; thence eastward to the Iron springs; thence due east to the east line of the state; thence north along said east line of the state to a point due east of the northeast corner of said county, as heretofore constituted; thence west to the northwest corner of said county, as heretofore constituted; and thence south to the place of beginning. Change of boundaries, Pueblo county.

374. SEC. 2. The boundaries of the county of Huerfano shall be as follows, to wit: commencing at the summit of the Cuerno Verde peak; thence following the summit of the main range of mountains around the head waters of the Huerfano and Cucharas rivers to the summit of the easterly of the two Spanish peaks; thence northward along the dividing ridge between the waters of the Santa Clara and Apishapa rivers to the south line of the county of Pueblo, as described in section one of this act; thence westward along said line to the Corral de Toros; thence southwesterly to the summit of the Cuerno Verde peak, to the place of beginning. Change of boundaries, Huerfano county

375. SEC. 3. The boundaries of the county of Las Animas shall be as follows, to wit: commencing at the southeast corner of the county of Pueblo, as defined by the first section of this act, thence running due west to the Iron springs; thence westerly along the southern line of Pueblo county, as defined by the first section of this act, to the dividing ridge between the waters of the Apishapa and Santa Clara rivers; thence southward up the said dividing ridge to the summit of the easterly of the two Spanish peaks; thence westerly along the summit of the mountains to the eastern boundary of the county of Costilla; thence south along said eastern boundary of Costilla county to the southern line of the state; thence east to the southeast corner of the state; thence north to the place of beginning. Change of boundaries, Las Animas county.

AN ACT TO ESTABLISH THE COUNTIES OF BENT AND GREENWOOD.

[Session Laws, 1870.]

Amendment of 1874, abolishing Greenwood county and re-establishing boundaries of Bent county.

376. SECTION 1. That the boundary lines of the county of Bent shall be as follows: commencing upon the eastern boundary line of Colorado, at its intersection with township line between townships thirteen (13) and fourteen (14) south; thence west on said township line to the range line between ranges fifty-nine and sixty, west; thence south on said range line to the township line between townships twenty-seven (27) and twenty-eight (28) south; thence east on said township line to the eastern boundary line of Colorado; thence north on said eastern boundary line to the place of beginning.

AN ACT TO CREATE AND ESTABLISH THE COUNTIES OF RIO GRANDE, HINSDALE, AND LA PLATA, AND FOR OTHER PURPOSES.

[Session Laws, 1874.]

Establishment.

377. SECTION 1. That the counties of Rio Grande, Hinsdale, and La Pata shall be and are hereby created and established, with the legal capacity and functions of the other counties of this state, and with boundaries as follows,

Rio Grande.

to wit: for the county of Rio Grande, commencing at a point where the ninth correction line, north, intersects the New Mexico first guide meridian, east; thence north along said guide meridian to the point where it intersects the boundary line between the counties of Costilla and Saguache; thence westerly along the southern boundary of Saguache county to the point where it intersects the New Mexico principal meridian; thence south along said principal meridian to the point where it intersects the ninth correction line, north; thence east along said correction line to the place of beginning.

Hinsdale.

378. SEC. 2. The county of Hinsdale shall be bounded as follows: commencing at the point of intersection of the ninth correction line, north, with the New Mexico principal meridian, and running thence north along said principal meridian to the southern boundary of Saguache county; thence westerly along the southern boundary of

Saguache county to the one hundred and seventh meridian of longitude west from Greenwich; thence north along said meridian to a point ten miles north of the thirty-eighth parallel of north latitude; thence west to a point due north of a point six miles west of the mouth of Lost Trail creek, on the Rio Grande river; thence south to the point of intersection with the ninth correction line, north; thence east along said correction line to the place of beginning.

La Plata.

379. SEC. 3. The county of La Plata shall be bounded as follows: commencing at a point six miles west of the mouth of Lost Trail creek, and running thence north to a point ten miles north of the thirty-eighth parallel of north latitude; thence west to the western boundary of the state; thence south along said western boundary to the southwest corner of the state; thence east along the southern boundary of the state to a point due south of the place of beginning; thence north to the place of beginning.

AN ACT TO ESTABLISH THE COUNTY OF ELBERT.

[Session Laws, 1874.]

Establishment of Elbert county

380. SECTION 1. That so much of the county of Douglas as is included in the following described boundaries, shall be set apart, and is hereby established, with the legal capacity and functions of other counties of this state, to be called Elbert county.

Boundaries.

381. SEC. 2. Beginning at a point where the center of range sixty-five, west, intersects the first correction line, south; thence east on said correction line to the eastern boundary of the state; thence south, on said eastern boundary line to the line between townships thirteen and fourteen, south; thence west on said line to the line between ranges fifty-nine and sixty, west; thence north on said last mentioned line to the second correction line, south; thence west on said second correction line to the center of range sixty-five, west; thence north through the center of range sixty-five, to place of beginning.

AN ACT TO CREATE THE COUNTY OF GRAND.

[Session Laws, 1874.]

Establishment of Grand county.

382. SECTION 1. That so much of the county of Summit, in the state of Colorado, as is included within the following described boundaries, shall be set apart, and is hereby created into a new county, to be called Grand county.

Boundaries.

383. SEC. 2. Beginning on the summit of the snowy range of the Rocky mountains, on the west boundary of Clear Creek county, at the point where the dividing range between the waters of Williams' fork and Blue river diverges from the main snowy range; running thence northwest along the summit of said dividing range between Williams' fork and Blue river, to a point of intersection with the boundary line between townships one and two, south of the base line; thence west along said township line to the eastern boundary of the Ute Indian reservation; thence north along said boundary to the northeast corner of said reservation; thence west along the north boundary of said reservation to the west boundary of the state; thence north to the northwest corner of the same; thence east along the north boundary of the state to the northwest corner of Larimer county; thence south along the western boundaries of Larimer, Boulder and Gilpin counties, and west, northwest and southwest, along the north and west boundaries of Clear Creek county, to the place of beginning.

AN ACT TO ESTABLISH THE COUNTY OF SAN JUAN.

[Session Laws, 1876.]

Establishment and boundaries of San Juan county.

384. SECTION 1. That the county of San Juan, is hereby created and established, with the legal capacity and functions of the other counties of the state, and with boundaries as follows: commencing at a point on the western boundary of Hinsdale county, nine miles south of where it intersects the tenth (10) correction line north; running thence due west to the western line of the state; thence

north along such line to a point ten (10) miles north of the thirty-eighth parallel of north latitude; thence east to a point on the summit of the main range of mountains, dividing the waters of the Uncompahgre and Animas rivers, from the waters of the Lake Fork of the Gunnison; thence in a southerly direction, along the summit of said range to a point at the head of the north fork of Pole creek; thence down said creek to the present boundary line between Hinsdale and La Plata counties; thence due south, along said line to the place of beginning; and the boundary lines of La Plata and Hinsdale counties are hereby changed to correspond with the provisions of this act.

AN ACT TO ESTABLISH AND CREATE THE COUNTY OF OURAY.

Be it enacted by the General Assembly of the State of Colorado:

385. SECTION 1. That the county of Ouray is hereby created and established, with the legal capacity and functions of other counties of this state, and with the boundaries as follows: commencing at a point on the boundary line between the counties of Hinsdale and San Juan, due east of the junction of Mineral creek and the main branch of the Uncompahgre river; thence due west through said junction to the summit of the divide between Red Mountain valley and Poughkeepsie gulch; thence southerly, along the said divide, to the divide between the waters of the Animas river, and the Uncompahgre river; thence along the divide separating the waters of the Uncompahgre, and San Miguel rivers on the north, from those of the Animas river on the south, to the north line of La Plata county; thence along the north line of said La Plata, county to the western line of the state; thence north to the southwest corner of Lake county; thence east along the south line of Lake county to the western line of Hinsdale county; thence southerly along the western boundary of Hinsdale county to the place of beginning. Establishment and boundaries of Ouray county.

386. SEC. 2. Until the county seat shall be located as provided by law, the court for the county, and the county County seat.

offices shall be held at such place in the county as may be designated by the county commissioners; and at the next general election after the passage of this act, the qualified electors of said county of Ouray, shall select a county seat for said county by ballot. The county clerk in his notice of said election shall give notice to the electors to have written or printed upon their ballots the name of a place for county seat, and the place having a majority of all the votes cast at said election for county seat, shall be the county seat of said county. The vote for county seat shall be returned to and canvassed by the same board of canvassers as by law canvasses the votes polled for county officers.

Transfer of cases and proceedings in courts.

387. SEC. 3. All cases, civil or criminal, now pending in the district or county court of San Juan county, wherein the cause of action accrued within the territory now embraced within the new county of Ouray, or wherein the defendant or defendants reside therein, shall be, as soon as said new county of Ouray is organized, transferred by the clerk or judge of said district or county court to the court of like jurisdiction for said new county of Ouray, in like manner as is provided for the transfer of causes in counties hertofore attached to others for judicial purposes.

County officers.

388. SEC. 4. The offices of such officers of the county of San Juan as shall live within the territory embraced in the new county of Ouray, shall become vacant on the taking effect of this act, and such vacancies shall be filled as provided by law.

County indebtedness.

389. SEC. 5. The present indebtedness of the county of San Juan, shall be apportioned between the counties of San Juan and Ouray, in proportion to the taxable property in each, as shown by assessment roll for the year A. D. 1876, and the governor shall have power to appoint some disinterested person to arbitrate and settle such accounts, whenever notified by the county commissioners of either county of their inability to settle without such arbitration, each county to pay its ratable proportion of the expenses of such arbitration.

Terms of courts.

390. SEC. 6. The terms of the district and county court of the county of Ouray shall be as regulated by law.

391. SEC. 7. The county of Ouray is hereby made

part of the twentieth senatorial district, and of the fourth judicial district, and attached to the county of San Juan for representative purposes. Legislative apportionment.

392. SEC. 8. There being an emergency existing, whereby it becomes necessary for the early taking effect of this act, occasioned by the impassable roads during the winter months, preventing the transaction of all legal business during five months of the year, therefore this act shall take effect and be in force on and after its passage. Emergency.

Approved, January 18, 1877.

AN ACT TO ESTABLISH THE COUNTY OF ROUTT.

Be it enacted by the General Assembly of the State of Colorado:

393. SECTION 1. That so much of the county of Grand as is included in the following described boundaries, shall be set apart, and is hereby established with the legal capacity and functions of other counties of this state, to be called the county of Routt, to be bounded as follows, to wit: Establishment of Routt county.

394. SEC. 2. Beginning at a point on the summit of Gore range, where the south line of Grand county crosses said range, thence running north to the boundary line between Colorado and Wyoming territory; thence west along said boundary line to its intersection with the boundary line between Colorado and the territory of Utah; thence south along said boundary line, to a point where the north line of Summit county intersects the same; thence due east along said north boundary to the east line of the Ute reservation; thence south along east boundary of said reservation to the south line of Grand county; thence east to the place of beginning. Boundaries.

395. SEC. 3. That until the county seat shall be located as provided by law, the court for the county and the county officers [offices] shall be held at such place in the county as may be designated by the county commissioners, and at the next general election after the passage of this act, the qualified electors of said county of Routt shall select a county seat by ballot. The county clerk, in his notice of said election, shall notify the electors of said county to have written County seat.

or printed on their ballots, the name of a place for county seat of said county of Routt. The vote for county seat shall be returned to and canvassed by the same board of canvassers as by law canvass the vote polled for county officers.

County officers.

396. SEC. 4. That the governor is hereby authorized and required to appoint all the county and precinct officers for the said county of Routt, to hold their respective offices until after the next general election in said county, or until their successors are duly elected and qualified according to law.

County indebtedness.

397. SEC. 5. That the county commissioners of Grand county, and the county commissioners of the said county of Routt, shall have full power and authority to adjust and settle all matters relating to revenue, which may be necessary to adjust and settle on account of the formation of the said new county of Routt, and to apportion the present indebtedness of the said county of Grand, between the said county of Grand and the said new county of Routt, and for this purpose the county commissioners of either county may give notice in writing to the county commissioners of the other county, at least thirty days before the day of meeting, of the time when the two boards of county commissioners shall meet for the purpose of settling said matters of indebtedness and revenue; said meeting to take place at the county seat of the said county of Grand.

Quorum at joint session of boards of commissioners

398. SEC. 6. That at the joint session of the boards of county commissioners for the said county of Grand, and the said new county of Routt, as provided in section five of this act, a majority of said boards shall constitute a quorum for the transaction of business: *Provided, however*, that if all of the said commissioners shall not be present at this first meeting, then it shall be the duty of said commissioners so assembled to adjourn the said meeting for at least thirty days.

Apportionment.

399. SEC. 7. That the county of Routt shall be attached to the county of Grand for senatorial, representative and judiciary purposes.

Appointment of officers.

400. SEC. 8. This act shall take effect in accordance with the provisions of the constitution of the state of Col-

orado: *Provided*, that the governor may appoint the officers provided for in the fourth section of this act, at any time after the passage of this act.

Approved, January 29, 1877.

AN ACT TO CREATE AND ESTABLISH THE COUNTY OF CUSTER, AND TO PROVIDE FOR HOLDING AN ANNUAL TERM OF COURT THEREIN.

Be it enacted by the General Assembly of the State of Colorado:

401. SECTION 1. All that section of country now forming a portion of Fremont county, and further described by boundaries in section two of this act, is hereby created, set apart, and established, as the county of Custer, and shall possess all such legal functions and capacities as other counties in this state. Establishment of Custer county.

402. SEC. 2. The new county of Custer shall be bounded as follows, to wit: commencing at a point on the summit of the Sangre de Christo range of mountains, where the fourth correction line, south, if extended, would cross said range of mountains; thence running east along said fourth correction line to the line between ranges sixty-eight and sixty-nine west of the sixth principal meridian; thence south along said line to the north line of Huerfano county; thence westerly along said north line of Huerfano county to the summit of the Sangre de Christo range of mountains; thence northerly and northwesterly, along the summit of said Sangre de Christo range of mountains, to the place of beginning. Boundaries.

403. SEC. 3. The governor of this state shall, immediately after the passage of this act, appoint all the necessary county officers of and for said Custer county, who shall hold their respective offices, unless removed for cause, until the next general election. And the county commissioners so appointed shall provide a secure and safe place for the records of said Custer county, and shall designate the points at which courts shall be held, and shall make all other necessary arrangements to carry out the provisions of this act, until the next general election, when the county seat shall be established by a vote of the people. Appointment of officers.

Organization.

404. SEC. 4. The officials of Fremont county shall retain their official positions and jurisdiction in the portion of Fremont county embraced in said new county of Custer, until the officials of said new county of Custer shall have qualified, or until a sufficient number of them shall have qualified to maintain and carry on a separate county organization, in which event the offices of such officials of Fremont county as shall be living within the territory embraced in said new county of Custer at the time of the passage of this act, shall become vacant, and the governor of this state is hereby authorized and required to appoint officers to fill such vacancies in said counties until the next general election.

Apportionment of indebtedness.

405. SEC. 5. The boards of county commissioners of said counties of Fremont and Custer, shall have full power and authority to adjust and settle all matters of revenue that it may be necessary to adjust and settle, on account of the formation of said new county of Custer, and also to apportion the present indebtedness of said county of Fremont, between the counties of Fremont and Custer, and for this purpose the board of county commissioners of either one of the counties specified, may give at least ten days' notice in writing, to the county commissioners of the other county, at any time after the officers of the new county of Custer shall have been duly elected and qualified, of the time when the boards of county commissioners of said counties of Fremont and Custer, shall meet for the purpose of adjusting said matters of revenue, and apportioning said indebtedness; said meeting shall be held at the county seat of Fremont county, and a quorum of the united boards of the counties named, shall be a legal quorum to adjust said revenue and apportion said indebtedness: *Provided*, that in case there should not be a quorum present at said meeting, or in case the different boards fail to agree on the adjustment of revenue, and the apportionment of indebtedness, then, upon request of any one of the boards of county commissioners of either of the counties of Fremont or Custer, the governor of this state is hereby authorized and required to appoint some disinterested person to adjust and settle said matters of revenue

and indebtedness, and his decision shall be final. The expenses of such arbitration, if any shall be required, shall be paid in equal proportion by said counties of Fremont and Custer.

406. SEC. 6. All cases, civil and criminal, now pending in the district and county courts of Fremont county, wherein the cause of action occurred in the territory embraced in the new county of Custer, or wherein the defendant or defendants reside therein, shall be, as soon as the officers of the said new county of Custer shall have been duly elected and qualified, transferred by the clerks or judges of said county of Fremont, to the courts of the same jurisdiction for said new county of Custer. Transfer of cases in courts.

407. SEC. 7. There shall be held annually in the county of Custer, one term of the district court, which shall begin on the last Monday in May in each year; said court and all proceedings therein shall be governed in all respects, by the existing laws regulating and governing the district courts in other counties in this state. Terms of court.

408. SEC. 8. The county of Custer is hereby attached to, and made part of the fourteenth senatorial district, of the third judicial district, and is also hereby attached to the county of Fremont, for representative purposes, and shall so remain until otherwise changed by law. Apportionment.

409. SEC. 9. All acts and parts of acts in conflict with this act are hereby repealed. Repeal.

410. SEC. 10. As this act should take effect upon its passage, so that the new county may be organized in time to hold a term of court this year, and that the assessor of Custer county may make the annual assessment at the usual time, therefore, in the opinion of this general assembly, an emergency exists, and this act shall take effect immediately. Emergency.

Approved, March 9, 1877.

AN ACT TO ESTABLISH THE COUNTY OF GUNNISON.

Be it enacted by the General Assembly of the State of Colorado:

411. SECTION 1. That the county of Gunnison is hereby

Establishment and boundaries of Gunnison county.

created and established, with the legal capacity and functions of other counties of this state, and with boundaries as follows: commencing at a point on the south line of Lake county, where the said line crosses the summit of the range of mountains forming the water-shed between the waters of the Arkansas river, and of the streams draining westward into the Colorado river, known as the Saguache range; thence northward, along the summit of such range, to the north line of said Lake county; thence due west to the western line of the state; thence south, along the west line of the state, to the point where the north line of the county of Ouray intersects the same; thence east, along the north line of Ouray county, and the north line of Hinsdale county, to the west line of Saguache county; thence north, along said west line to the northwest corner of Saguache county; thence east, along the north line of Saguache county to the place of beginning.

Apportionment of officers

412. SEC. 2. The offices of such officers of the county of Lake, as shall live within the territory embraced in the new county of Gunnison, shall become vacant on the taking effect of this act, and such vacancies shall be filled as provided by law, and the governor is hereby authorized to appoint all the county and precinct officers, for the said county of Gunnison, who shall hold their respective offices until after the next general election in said county, or until their successors are duly elected and qualified according to law.

County seat.

413. SEC. 3. Until the county seat shall be located as provided by law, the county court and the county offices shall be held at such place in the county as may be designated by the county commissioners, and at the next general election after the passage of this act, the qualified electors of said county of Gunnison, shall select a county seat for said county by ballot. The county clerk in his notice of said election shall give notice to the electors, to have written or printed upon their ballots, the name of a place for county seat, and the place having a majority of all the votes cast at said election for county seat shall be the county seat of said county. The votes for county seat shall be returned to and canvassed by the same board of

canvassers as by law canvasses the votes polled for county officers.

414. SEC. 4. All cases civil or criminal now pending in the county court of Lake county wherein the cause of action accrued within the territory now embraced within the new county of Gunnison, or wherein the defendant or defendants reside therein, shall be, as soon as said new county of Gunnison is organized, transferred by the clerk or judge of said county court, to the court of like jurisdiction, for said new county of Gunnison, in like manner as is provided for the transfer of causes in counties heretofore attached to others for judicial purposes. Transfer of cases in courts.

415. SEC. 5. All county records or other county property heretofore belonging in or to the county of Lake, shall be and remain the property of said county. County records.

416. SEC. 6. A transcript of the records of all property situated in the county of Gunnison, shall be furnished to the county clerk of said county, by the county clerk of Lake county, upon payment of such fees as provided by law, and such transcript may be entered upon the record books of Gunnison county, and shall be deemed and held to be a good and legal record. Transcript of records.

417. SEC. 7. The present indebtedness of the county of Lake, shall be apportioned between the counties of Lake and Gunnison, in proportion to the taxable property in each, as shown by the assessment roll for the year of 1876, and the governor shall have the power to appoint some disinterested person to arbitrate and settle such accounts, whenever notified by the county commissioners of either county of their inability to settle without such arbitration, each county to pay an equal share of the expenses of such arbitration. Apportionment of indebtedness.

418. SEC. 8. The county of Gunnison is hereby attached to the county of Lake for senatorial, representative and judicial purposes. Apportionment.

419. SEC. 9. Whereas, it is important that the annual assessment of taxes for the year 1877, in the said county of Gunnison, be made at the time prescribed by law, and other interests of the people inhabiting said county require that this act take effect immediately upon its passage, there- Emergency.

fore in the opinion of this general assembly an emergency contemplated by section nineteen of article five of the constitution exists, and this act shall take effect and be in force from and after its passage.

Approved, March 9, 1877.

AN ACT CONCERNING THE MORE DEFINITE LOCATION OF COUNTY LINES.

Be it enacted by the General Assembly of the State of Colorado:

How boundary lines to be determined.

420. SECTION 1. That wherever the boundary line of any county shall be so indefinite as to make it impossible to determine where such lines are, and when a portion of territory by reason of such indefinite description, is claimed by two counties, the county commissioners of each county so claiming the said territory, shall be authorized to have a survey made to define the boundaries, and if it shall occur that either county is dissatisfied with the boundary line as thus determined, they may be entitled to require of the other an arbitration for the settlement of the matter, from which arbitration there shall be no appeal, and the decision shall be final.

Arbitration.

421. SEC. 2. When such arbitration is required, the board of county commissioners of each county shall choose one person from their county, and such persons shall select a third person who shall not be a resident of either county, and such three persons so chosen shall constitute a board of arbitration, for the purposes mentioned in section one of this act.

Agreements for arbitration to be signed.

422. SEC. 3. All counties shall before entering into such arbitration, by their commissioners, sign such agreements as required by law of arbitrations, and the board of arbitrators shall before acting in such capacity, take such oath as prescribed by law. And the expense of survey and arbitration shall be equally borne by each county, to be paid out of the regular county fund.

County lines not to be changed.

423. SEC. 4. Nothing in this act shall be construed to authorize a change of county lines.

Approved, February 23, 1877.

CHAPTER XXII.

COUNTIES, COUNTY OFFICERS AND COUNTY GOVERNMENT.

AN ACT RELATING TO ABSTRACTS FROM COUNTY RECORDS.

[Session Laws, 1874.]

424. SECTION 1. That it shall be the duty of the several county clerks and recorders in this state to make and furnish upon application therefor, abstracts of deeds, powers of attorney, mortgages, releases and all other instruments and muniments of title to real property recorded in their respective counties, which abstract shall set forth a description of the property, the character of the instrument and date of the execution and acknowledgment, the names of the parties to the instrument, the date of record and the page and volume of the record book wherein such instrument is recorded, and such abstract shall be made and furnished by said clerks and recorders to any person who shall make application therefor, and shall pay or tender the fees provided by law, and such abstracts shall be certified by said clerks and recorders under seal of their offices as correct from what appears of record in their office.

County clerks to furnish abstracts —when.

AN ACT AUTHORIZING COUNTY CLERKS IN THE STATE OF COLORADO TO ADMINISTER OATHS.

Be it enacted by the General Assembly of the State of Colorado:

425. SECTION 1. That the county clerks of the several counties in the state of Colorado be, and they are hereby authorized, within their respective counties, to administer all oaths of office, and other oaths required to be taken by any person upon any lawful occasion, and to take affidavits and depositions concerning any matter or thing, process or proceeding, pending or to be commenced in any court or before any justice of the peace, or on any occasion wherein such affidavit or deposition is authorized or required by law to be taken.

County clerks authorized to administer oaths and take affidavits and depositions.

426. SEC. 2. That oaths and affirmations, affidavits and

Liability of persons for false oath or affirmation.

depositions administered or taken as provided in this act, shall subject any person who shall falsely so swear or affirm, in matters material to any issue or point in question, to the pains and penalties inflicted by law for the time being upon persons guilty of wilful and corrupt perjury.

Compensation.

427. SEC. 3. For administering oaths and taking affidavits or depositions as provided in section one of this act, county clerks shall receive the same compensation as is now or may hereafter be allowed by law to notaries public for like services.

Approved, March 1, 1877.

AN ACT CONCERNING COUNTIES, COUNTY OFFICERS, AND COUNTY GOVERNMENT, AND REPEALING LAWS ON THESE SUBJECTS.

Be it enacted by the General Assembly of the State of Colorado:

Powers.

428. SECTION 1. Each organized county within the state, shall be a body corporate and politic, and as such shall be empowered for the following purposes:

First—To sue and be sued.

Second—To purchase and hold real and personal estate for the use of the county, and lands sold for taxes, as provided by law.

Third—To sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants.

Fourth—To make all contracts, and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers.

Fifth—To exercise such other and further powers as may be especially conferred by law.

County property

429. SEC. 2. Any real or personal estate heretofore, or which may be hereafter, conveyed to any county, shall be deemed the property of such county.

By whom powers to be executed.

430. SEC. 3. The powers of a county as a body politic and corporate, shall be exercised by a board of county commissioners therefor.

431. SEC. 4. Each organized county shall, at its own expense, provide a suitable court house, and a sufficient jail, and other necessary county buildings, and keep them in repair. County buildings.

432. SEC. 5. In all suits or proceedings, by or against a county, the name in which the county shall sue or be sued, shall be, the board of county commissioners of the county of ————; but this provision shall not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county. How entitled in suits.

433. SEC. 6. In all legal proceedings against the county, process shall be served on the clerk of the board of county commissioners, and whenever such suit or proceeding shall be commenced, it shall be the duty of the clerk forthwith to notify the county attorney thereof, and to lay before the board of county commissioners, at their next meeting, all the information he may have in regard to such suit or proceeding. Upon whom process to be served in suits against counties.

434. SEC. 7. On the trial of any suit in which a county may be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent and qualified according to law. Who competent as witnesses and jurors.

435. SEC. 8. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him in his name of office, when the same shall be paid by the county, no execution shall issue upon said judgment, but the same shall be levied and paid by the tax, as other county charges, and when so collected shall be paid by the county treasurer to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor: *Provided*, that nothing in this section shall prohibit the county commissioners from paying such judgment by a warrant upon the county treasury. Execution not to issue or judgments rendered against county. How judgments to be paid.

436. SEC. 9. The board of county commissioners shall consist of three members, any two of whom shall be competent to transact business, who shall be elected according to law. Board of commissioners.

437. SEC. 10. At the first election held to choose the first board of county commissioners of any county, the Determination of terms of office.

person having the highest number of votes shall continue in office three years; the next highest two years, and the next highest one year. But if two or more persons have the same number of votes, then their terms shall be determined by lot, under the direction of the board of canvassers returning the election, and annually thereafter one commissioner shall be elected and shall continue in office three years: *Provided*, that the period of time from the first election to the next general election, shall be considered the first year.

Apportionment of county into districts.

438. SEC. 11. Each county shall be divided by the first board of commissioners holding office, into three compact districts, as equal in population as possible, numbered respectively one, two and three, and not subject to alteration oftener than once in two years; and one commissioner shall be elected from each of such districts by the voters of the whole county, as herein provided. Such division of the county into districts shall be made within six months after the first board of county commissioners are elected to office.

Meetings of board of commissioners.

439. SEC. 12. Each board of county commissioners shall meet at the county seat of each county on the first Monday in January, April, July and October in each year, and at such other times as in the opinion of the board the public interest may require.

Oath to be taken by commissioners.

440. SEC. 13. Each person elected as such commissioner shall, on receiving a certificate of his election, take an oath to support the constitution of the United States and of the state of Colorado, and to perform the duties of his office to the best of his ability, which oath, being indorsed upon said certificate, under the hand and seal of the person administering it, shall be sufficient for said person to act as said commissioner.

Election of commissioners in case number increased to five.

441. SEC. 14. Whenever any county having a population exceeding ten thousand, avails itself of the provision of section 6 of article 14 of the constitution, and increases its board of county commissioners to five, it shall, at the first ensuing general election, elect three commissioners, one of whose term of office shall be three years, one two years, and one one year. At the next ensuing general election

and every three years thereafter it shall elect two, whose term of office shall be three years. At the next general election and every three years thereafter it shall elect two, whose term of office shall be three years, and at the next general election, and every three years thereafter it shall elect one, whose term of office shall be three years.

Elections in cases where board already consists of five members.

442. SEC. 15. Any county which already has the requisite population, and whose board of commissioners consist of five members, shall, at the general election to be held A. D. 1877, and every three years thereafter, elect two county commissioners, whose term of office shall be three years, and at the next general election, A. D. 1878, and every three years thereafter it shall elect two commissioners, whose term of office shall be three years, and at the next general election A. D. 1879, and every three years thereafter it shall elect one commissioner, whose term of office shall be three years; and any three of the board shall be competent to transact business.

When governor to appoint additional commissioners.

443. SEC. 16. When the citizens of any county, by petition of a majority of the legal voters to the commissioners shall express a desire to increase the number of its board of commissioners from three to five members the commisioners, upon its being shown by a census or otherwise, that there is a population in said county of ten thousand and upwards, shall so order and shall notify the governor of such order, who shall thereupon appoint two commissioners to serve until the next general election, when their places shall be filled by election as hereinafter provided.

Commissioner at large. Chairman of board to be superintendent of poor.

444. SEC. 17. When the board of county commissioners in any county shall consist of five members, one shall be elected from each district. every three years, and the others shall be elected at large; and the chairman shall be chosen by the board, who shall also be *ex officio* superintendent of the poor, and shall receive such compensation for his services as such superintendent, as provided by the board of commissioners of such county.

Vacancies, how filled.

445. SEC. 18. In case of a vacancy occurring in the office of county commissioner, the governor shall fill the same by appointment, and the person appointed shall hold

the office until the next general election, or until the vacancy be filled by election according to law.

Powers of board of commissioners

446. SEC. 19. The board of county commissioners of each county shall have power at any meeting:

First—To make such orders concerning the property belonging to the county as they may deem expedient;

Second,—To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle and allow all accounts chargeable against the county, and when so settled they may issue county orders therefor as provided by law;

Third—To build and keep in repair county buildings, and cause the same to be insured in the name of the county treasurer, for the benefit of the county; and in case there are no county buildings, to provide suitable rooms for county purposes;

Fourth—To apportion and order the levying of taxes as provided by law, and to contract loans in the name and for the benefit of the county, for the purpose of erecting necessary public buildings, making or repairing public roads or bridges, when such loans have been authorized by a vote of the legal voters of the county, and for the payment of the debts of the county, contracted in accordance with law, prior to the first day of July, A. D., 1876.

Fifth—To represent the county and have the care of the county property and the management of the business and concerns of the county, in all cases where no other provision is made by law.

Sixth—To set off, organize, and change the boundaries of precincts in their respective counties; to designate and give names therefor;

Seventh—To establish one or more voting places in each election precinct, as the convenience of the inhabitants may require;

Eighth—To lay out, alter or discontinue any road running into or through such county, and also to perform such other duties respecting roads, as may be required by law.

Ninth—To grant such licenses and perform such other duties as are or may be prescribed by law.

447. SEC. 20. The board of county commissioners shall not borrow money for the purposes hereinbefore stated, without having first submitted the question of such loan to a vote of the electors of the county, and without a majority of the voters legally qualified to vote and voting on that question shall have voted therefor. Question of loans to be submitted to vote.

448. SEC. 21. When the county commissioners of any county shall deem it necessary to create an indebtedness for the purpose of erecting necessary public buildings, making or repairing public roads or bridges, they may, by an order entered of record specifying the amount required and the object for which such debt is to be created, submit the question to a vote of the people, at a general election; and they shall cause to be posted a notice of such order in some conspicuous place in each voting precinct in the county, for at least thirty days preceding the election, and all persons voting on that question shall vote by separate ballot, wheron is placed the words "for county indebtedness," or "against county indebtedness;" such ballots to be deposited in a box provided by the county commissioners for that purpose, and no person shall vote on the question of indebtedness unless he shall have the necessary qualifications of an elector as provided by law, and shall have paid a tax upon property assessed to him in such county for the year immediately preceding, and if, upon canvassing the vote, (which shall be canvassed in the same manner as the vote for county officers) it shall appear that a majority of all the votes cast are for county indebtedness, then the county commissioners shall be authorized to contract the debt in the name of the county: *Provided*, That the aggregate amount of indebtedness of any county, exclusive of debts contracted prior to July first, 1876, in which the assessed valuation of property shall exceed one million of dollars, for all purposes, shall not be in excess of the following ratio, to wit: Counties in which the assessed valuation of property shall exceed five millions of dollars, six dollars on each thousand dollars thereof; counties in which the assessed valuation of property shall be less than five millions, and exceed one million of dollars, twelve dollars on each thousand dollars thereof. Conduct of elections, and qualifications of electors, on question of creating indebtedness. Limitation of amount of county indebtedness.

Coupon bonds, how and when to be paid.

449. SEC. 22. The county commissioners, when authorized as provided in section twenty-one of this act, shall make and issue coupon bonds of the county, not exceeding the amounts specified in the preceding section, in counties which have an assessed property valuation exceeding one million of dollars, payable at the pleasure of the county, ten years after the date of their issuance, but absolutely due and payable twenty years after such date, bearing interest at the rate of not exceeding ten per cent. per annum, from their date until paid. Said interest payable on the first day of April of each year, and the principal, when due, at the office of the county treasurer of the county, and the county commissioners shall prescribe the form of said bonds, and the coupons thereto; and to provide for the annual interest accruing on the bonds, they shall levy annually a sufficient tax to fully discharge such interest; and for the ultimate redemption of such bonds, they shall levy annually, after ten years from the date of such issuance, such tax upon all taxable property in their county as shall create a yearly fund equal to ten per cent. of the whole amount of such bonds issued; and all taxes for interest on, and the redemption of such bonds shall be paid in cash only, and shall be kept by the county treasurer as a special fund, to be used in the payment of interest on, and redemption of such bonds only; such taxes to be levied and collected as other taxes.

Levy of tax for payment of bonds and interest.

Manner of redemption of bonds.

450. SEC. 23. When it shall appear to the board of county commissioners, upon examination of the books and accounts of the county treasurer, that there are sufficient funds in his hands to the credit of the redemption fund to pay in full the principal and accrued interest of any of such bonds, it shall be the duty of such board immediately to call in and pay as many of such bonds and accrued interest thereon as the funds ascertained to be on hand will liquidate, and said board shall thereupon cancel such redeemed bonds, and all uncancelled interest coupons issued therewith. The bonds shall be called in and paid in the order of their issuance, as nearly as may be practicable, and when it is desired to redeem any of such bonds by said board, they shall cause to be published for thirty days, in some newspa-

per at or nearest the county seat of the county, a notice that certain county bonds (specifying the numbers and amounts) will be paid upon presentation, and at the expiration of such thirty days said bonds shall cease to bear interest.

Bonds; how to be signed and issued.

451. SEC. 24. The bonds issued as heretofore provided, shall be signed by the chairman of the board of county commissioners, and attested by the clerk of the county, and bear the seal of the county upon each bond, and shall be numbered and registered in a book kept for that purpose, in the order in which they are issued. Each bond shall state upon its face the amount for which the same is issued, to whom issued, and the date of its issuance; but no bond shall be of a less denomination than fifty dollars, and, if issued for a greater amount, then for some multiple of that sum; and the aggregate amount of such bonds issued shall not exceed the sum entered of record by the board of county commissioners, as required in section 21 of this act, and any bond issued in excess of said sum shall be null and void.

Sale and cancellation of bonds.

452. SEC. 25. The board of county commissioners shall have the right to sell any of such bonds, but no bond shall be sold unless for cash, and not then at a discount of more than 15 per cent. on its par value. The money arising from the sale of such bonds shall be forthwith used for the objects for which the debt was created, and for no other purpose whatever. When any such bonds or any coupons shall be redeemed, the board of county commissioners shall, in the presence of the clerk of said board or his deputy, cancel such bonds or coupons by writing the word "cancelled" on the face of such bonds or coupons, and said board shall make a record of the proceedings, stating what bonds or coupons were cancelled.

Bonds exchanged for county orders; how issued and payable.

453. SEC. 26. The several counties of this state shall have power to issue to any person or corporation, holding any county order or orders, issued prior to the first day of July, A. D. 1876, coupon bonds of their county, in lieu thereof, to any amount equal to the face of said order or orders, and the interest due thereon. But no bond shall be of a less denomination than fifty dollars, and if issued for a greater amount, then for some multiple of that sum.

Such bonds to draw interest at the rate of ten per cent. per annum, from the date of their delivery. The interest to be paid at the office of the county treasurer, on the first day of April in each year, upon the production of the proper coupons for the same. Such bonds to be payable at the pleasure of the county, after ten years from the date of their issuance, but absolutely due and payable twenty years after the date of issue. The whole amount of such bonds issued under this act shall not exceed the sum of the county indebtedness existing the first day of July, A. D. 1876, and it shall be the duty of the county commissioners of any county that shall vote for the issuance of such bonds, to ascertain and determine the amount of county orders of such county, issued prior to the first day of July, A. D. 1876, remaining due and unpaid at the time of such computation, and they shall make a certificate of the amount so ascertained and determined, and the said certificate shall be entered by the clerk of said county upon the county records, and the aggregate amount of such bonds issued by such county shall not exceed the sum in said certificate mentioned, and any bond issued in excess of said sum shall be null and void.

Limitation of amount.

How such bonds signed and registered.

454. SEC. 27. No county commissioners shall be authorized to issue such bonds, unless the question shall have been submitted to a vote of such electors of the county, and in such manner and form as provided in section 21 of this act, and a majority shall have voted therefor, and the bonds issued shall be signed by the chairman of the board of county commissioners and attested by the clerk of said county, and bear the seal of the county upon each bond, and shall be numbered and registered in a book kept for that purpose, in the order in which they are issued. Each bond shall state upon its face the amount for which the same is issued, to whom issued, and the date of its issuance.

Levy of tax for interest on and redemption of bonds.

455. SEC. 28. In no case, in exchanging orders for bonds, shall an order be taken for less than its par value, nor any bond be issued for less than its par value; and the commissioners shall be authorized to prescribe the form of said bonds, and the coupons thereto; and to provide for

the yearly interest accruing on such bonds, actually issued and delivered, they shall levy annually a sufficient tax to fully discharge such interest; and for the ultimate redemption of such bonds, they shall levy annually after ten years from the date of such issuance, such tax upon all taxable property in their county as shall create a yearly fund equal to ten per cent. of the whole amount of such bonds issued; and all taxes for interest on and redemption of such bonds shall be paid in cash only, and shall be kept by the county treasurer as a special fund to be used in the payment of interest on and redemption of such bonds only. Such taxes to be levied and collected as other taxes.

Manner of redemption of such bonds.

456. SEC. 29. When it shall appear to the board of county commissioners, upon examination of the books and accounts of the county treasurer, that there are sufficient funds in his hands to the credit of the redemption fund to pay in full the principal and accrued interest of any of such bonds, it shall be the duty of such board immediately to call in and pay as many of such bonds and accrued interest thereon as the funds ascertained to be on hand will liquidate; and when any bonds or coupons issued as heretofore provided are surrendered or taken up, it shall be the duty of the board of county commissioners to have the same cancelled so that they can be plainly identified, and a record of the fact of such cancellation duly made and certified by them to be true, and when it is desired to redeem any of such bonds by said board they shall cause to be published for thirty days in some newspaper at or nearest the county seat of the county, a notice that certain county bonds (specifying the numbers and amounts) will be paid upon presentation, and at the expiration of such thirty days such bonds shall cease to bear interest.

Semi-annual statement; publication of, and what to contain.

457. SEC. 30. It shall be the duty of the board of county commissioners of each county to make out semi-annual statements at the regular sessions in January and July, at which times they shall have such statement published in some weekly newspaper published in the county, if there be such published; and if there be no newspaper published in the county, such commissioners shall cause

such statement to be posted in three conspicuous places in said county, one of which shall be the court house door; and such statement shall show the amount of debt owing by their county, in what the debt consists, what payments, if any, have been made upon the same, the rate of interest that such debts are drawing, also a detailed account of the receipts and expenditures of the county for the preceding months, in which shall be shown from what officer and on what account any money has been received, and the amounts, and to what individuals and on what account any money has been paid, and the amounts; and shall strike the balance, showing the amount deficit, if any, and the balance in the treasury, if any, and the statement thus made in addition to being published as before specified shall also be entered of record by the clerk of the board of county commissioners in a book to be by him kept for that purpose only, which book shall be open to the inspection of the public at all times.

Precincts; organization or change of boundaries.

458. SEC. 31. The board of county commissioners may set off or organize new precincts or change the boundaries of those already organized, as the public good from time to time seems to require.

Seal of board of commissioners. Sessions to be public.

459. SEC. 32. The seal of the county shall be the seal of the board of county commissioners. The commissioners shall sit with open doors, and all persons conducting themselves in an orderly manner may attend their meetings; and they may establish rules and regulations to govern the transaction of their business.

Chairman of board.

460. SEC. 33. They shall at the first meeting after their election, and after every annual election, choose one of their number chairman, who shall preside at such meeting, and all other meetings during the year, if present; but in case of his absence from such meeting, the members present shall choose one of their number as temporary chairman.

Power to administer oaths.

461. SEC. 34. The chairman of said board shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties, and he shall sign all county orders.

462. SEC. 35. No account shall be allowed by the board of county commissioners unless the same shall be

made out in separate items, and the nature of each item stated, and where no specified fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account, shall be specified; which account so made out, shall be verified by affidavit: *provided* that nothing in this section shall be construed to prevent any such board from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof as they may think proper.

Claims against county; how to be made and verified.

463. SEC. 36. County orders shall be signed by the chairman and attested by the clerk, and shall specify the nature of the claim or service for which they were issued.

County orders; how to be signed.

464. SEC. 37. When any claim of any person against a county shall be disallowed, in whole or in part, by the board of commissioners, such person may appeal from the decision of such board to the district court for the same county, by causing a written notice of such appeal to be served on the clerk of such board within thirty days after the making of such decision, and executing a bond to such county, with sufficient security, to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant.

Appeal from decision of board of commissioners on allowance of claim against county.

465. SEC. 38. The clerk of the board, upon such appeal being taken, shall immediately give notice thereof to the chairman of the board of county commissioners, and shall make out a brief return of the proceedings in the case before the board, with their decision thereon; and shall file the same, together with the bond and all the papers in the case in his possession, with the clerk of the district court; and such appeal shall be entered, tried, and determined, the same as appeals from justices' courts, and costs shall be awarded in like manner.

Duties of county clerk in cases of appeal.

466. SEC. 39. The board of commissioners of their respective counties, shall, at the expense of the county, furnish annually and in due season, to the assessor of the county, suitable blank assessment rolls, prepared in accordance with the provisions of law; and shall also provide suitable books and stationery for the use of each of the

Books, blanks, stationery, seals, etc, for use of county officers.

county officers of their county, together with appropriate cases and furniture for the safe and convenient keeping of all the books, documents, and papers belonging to each of said officers; and also, official seals for each of said officers, where the same are required by law.

Examination of county orders returned by treasurer.

467. SEC. 40. The board of county commissioners, at their January and July session of each year, or oftener if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on said record, opposite to the entry of each order issued, the date when the same was cancelled.

Penalty for neglect to perform duties of commissioner.

468. SEC. 41. If any commissioner shall refuse or neglect to perform any of the duties which are, or shall be, required of him by law, as a member of the board of county commissioners, without just cause therefor, he shall, for each offense, forfeit a sum not less than twenty-five dollars, nor more than one hundred dollars.

Duties of clerk of board of commissioners.

469. SEC. 42. It shall be the general duty of the clerk of the board of commissioners:

First—To record, in a book to be provided for that purpose, all proceedings of the board.

Second—To make regular entries of all their resolutions and decisions, in all questions concerning the raising of money.

Third—To record the vote of each commissioner on any question submitted to the board, if required by any member.

Fourth—Sign all orders issued by the board for the payment of money, and to record, in a book to be provided for that purpose, the receipts and expenses of the county.

Fifth—To preserve and file all accounts acted upon by the board, with their action thereon, and he shall perform such other duties as are required by law.

Clerk to make and certify copies of records and accounts.

470. SEC. 43. It shall be the duty of such clerk to designate upon every account which shall be audited and allowed by the board, the amount so allowed; and he shall also deliver to any person who may demand it, a certified copy of any record in his office, or any account on file

therein, on receiving from such person the fees prescribed by law.

471. SEC. 44. Such clerk shall not sign or issue any county order, unless ordered by the board of commissioners authorizing the same; and every such order shall be numbered, and the date, amount, and number of the same, and the name of the person to whom it is issued, shall be entered in a book kept by him in his office for that purpose. County orders; how to be signed, numbered, etc.

472. SEC. 45. Such clerk shall receive a reasonable compensation for such services as he may perform as clerk of the board, where no specific fees are allowed therefor, the same to be allowed by the board and paid by the county. Compensation of clerk.

473. SEC. 46. Every person appointed county commissioner shall hold his office until the general election, and until his successor shall be qualified. Period of service of commissioner when appointed.

474. SEC. 47. In case of any vacancy now existing or which may hereafter occur in any county office, except that of county commissioner or county judge, whose unexpired term of office shall exceed one year, or in any precinct office in any county in this state, by reason of death, resignation, removal or otherwise, the county commissioners of said county shall have power to fill such vacancy by appointment until an election can be held as provided by law. Vacancy in county offices other than judge or commissioner how filled.

COUNTY JUDGE.

475. SEC. 48. There shall be elected in each county a county judge, who shall, before he enters upon the duties of his office, execute to the people of the state of Colorado a bond in such penal sum as the board of county commissioners shall direct, not less than five thousand dollars, with two or more sufficient sureties to be approved as provided by law, conditioned for the faithful performance of the duties required of him by law; and for the faithful application and payment of all moneys and effects that may come into his hand in execution of the duties of his office. Election of county judge. Bond, how conditioned.

476. SEC. 49. The county judge shall keep a record of all probate business done by or before him, which record shall be open to the inspection of all persons without charge; and he shall receive such fees as are allowed by Record of probate business to be kept for inspection. Compensation.

law for probate business, and such other compensation as the board of county commissioners may determine: *Provided*, that nothing shall be paid by the county if the fees and official compensation of such judge shall amount to five hundred dollars.

Vacancies in office of county judge, how filled

477. SEC. 50. If any vacancy in the office of county judge should occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy, until a successor shall be elected according to law: *Provided*, that if the unexpired term exceed one year the vacancy shall be filled by election.

COUNTY CLERK.

Election of county clerk. Bond, how conditioned.

478. SEC. 51. A county clerk shall be elected in each county of this state for the term of two years, and he shall, before he enters upon the duties of his office, execute to the people of the state of Colorado, and file with the county clerk then in office, a bond with two or more sufficient sureties, in the penal sum of not less than five thousand dollars, to be affixed and approved by the county commissioners according to law, with conditions in substance as follows, to wit: "*Whereas*, The above bounden —— ——— was elected to the office of county clerk of ———, on the —— day of ——. *Now, Therefore*, if the said —— ——— shall faithfully perform all the duties of his office, and shall pay over all moneys that may come into his hands as such clerk as required by law, and shall deliver to his successor in office all the books, records, papers and other things belonging to his said office, then the above obligation to be null and void, otherwise to remain in full force." Which bond, after being recorded, shall be at once deposited with the county treasurer for safe keeping.

Clerk of board of commissioners.

479. SEC. 52. The county clerk shall be, in and for his county, clerk of the board of commissioners.

Clerk to appoint a deputy.

480. SEC. 53. Every such clerk shall appoint a deputy, in writing, under his hand, and shall file such appointment in his office; and such deputy, in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk during such absence or until such vacancy shall be filled. Every such

clerk may appoint other deputies, and his sureties shall be responsible under his official bond, for the acts of all such deputies.

Vacancy in office of, how filled.

481. SEC. 54. If a vacancy in the office of county clerk should occur by death, resignation or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy until a successor shall be elected according to law.

Duties of county clerk.

482. SEC. 55. The county clerk shall keep his office at the county seat; he shall attend the sessions of the board of county commissioners either in person or by deputy; keep the county seal, records and papers of the said board of county commissioners, and keep a record of the proceedings of the said board in a book, as required by law, under the direction of the said board of county commissioners.

Duties as recorder of deeds.

483. SEC. 56. The county clerk shall be *ex officio* recorder of deeds, and shall have custody of and safely keep and preserve all the books, records, deeds, maps and papers deposited or kept in his office; he shall also record or cause to be recorded in print or in a plain and distinct handwriting, in suitable books, to be provided and kept in his office, all deeds, mortgages, maps, instruments and writings, authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law.

General index.

484. SEC. 57. Every recorder shall keep a general index, direct and inverted, in his office. The general index direct, may be divided into seven columns, with heads to the respective columns as follows, to wit:

Time of Reception.	Names of Grantors.	Names of Grantees.	Nature of Instrum't.	Vol. and p. where r'corded	Remarks.	Descri p'n of Tract.

He shall make correct entries in such general index of every instrument recorded concerning or affecting real estate, under the appropriate headings, entering the names of the grantors in an alphabetical form. The general index inverted may be divided into seven columns, as follows, to wit:

Time of Reception.	Names of Grantees.	Names of Grantors.	Nature of Instrum't.	Vol. and p. where r'corded	Remarks.	Descri p'n of Tract.

He shall make in such general index correct entries of every instrument required by law to be entered in the general index direct, entering the names of the grantees in alphabetical order; and whenever any mortgage, bond or other instrument has been released or discharged from record, whether by written release upon the margin of the record, or by recording a deed of release, the recorder shall immediately note in both general indices, under the column headed "Remarks," and opposite to the appropriate entry, that such instrument has been satisfied.

Receiving book.

485. SEC. 58. He shall also keep a receiving book, each page of which shall be divided into five columns, as follows, to wit:

Time of recept'n	Names of Grantors.	Names of Grantees.	To whom deliver'd	Fees rec'd

Whenever any instrument has been received by him for record, he shall immediately indorse upon such instrument his certificate, noting the day, hour and minute of its reception, the volume and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of filing; whenever any instrument has been filed as aforesaid, the recorder shall immediately make an entry of the same in his receiving book, under the appropriate heading, with the amount paid as fee for recording the same, and after such instrument has been recorded, he shall deliver it to the person authorized to receive the same, writing the name of the person to whom it is delivered, in the appropriate column.

Book of plats.

486. SEC. 59. He shall also keep a large, well bound book in which shall be platted all maps of cities, towns, villages or additions to the same, within his county, together with the description, acknowledgment or other writing thereon. He shall keep an index to such book of plats, which index shall contain the name or names of the proprietor or proprietors of such city, town or village or addi-

tion, and the name of the city, town, village or addition. No recorder of deeds shall be bound to perform any of the duties required to be performed by this act, for which a fee is allowed, unless such fee has been paid or tendered.

Indexes to records.

487. SEC. 60. He shall also keep an index of each volume of records kept in his office, showing on one page the grantors' names in alphabetical order, and on the other page the names of the grantees in alphabetical order.

Copies of papers and records.

488. SEC. 61. Copies of all papers filed in the office of the recorder of deeds, and transcripts from the books of records kept therein, certified by him under the seal of his office, shall be *prima facie* evidence in all cases.

SHERIFF.

Election of sheriff; bond.

489. SEC. 62. A sheriff shall be elected in each county organized for judicial purposes for the term of two years, and who shall, before he enters upon the duties of his office, execute to the people of the state of Colorado, a bond, with at least three sufficient sureties, in such penal sum not less than five thousand dollars, nor more than twenty thousand dollars, as the board of county commissioners, or if they be not in session, the county clerk, subject to the approval of such board at its next session thereafter, shall specify and approve; said bond when thus approved, to be filed in the office of said clerk, and no person shall be received as surety who is not worth at least two thousand dollars over and above his just debts.

Condition of bond of sheriff.

490. SEC. 63. The condition of such bond shall be in substance as follows: "*Whereas*, The above bounden ——— was elected to the office of sheriff of the county of ———, on the ——— day of ———: *Now*, the condition of this obligation is such that if the said ——— shall well and faithfully perform and execute the duties of the office of sheriff of said county of ——— during his continuance in office by virtue of said election without fraud, deceit or oppression, and shall pay over all moneys that may come into his hands as sheriff, and shall deliver to his successor all writs, papers and other things pertaining to his office which may be so required by law, then the above obliga-

tion shall be void, otherwise to be and remain in full force and effect.

Appointment of under-sheriff.

491. SEC. 64. The sheriff of each county shall, as soon as may be after entering upon the duties of his office, appoint some proper person under-sheriff of said county, who shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such under-sheriff, or he become incapable of executing the same, another shall in like manner be appointed in his place.

Duties of under-sheriff in case of vacancy in office of sheriff.

492. SEC. 65. Whenever a vacancy occurs in the office of sheriff of any county, the under-sheriff of such county shall, in all things, execute the office of sheriff until a sheriff shall be appointed or elected and qualified; and any default or misfeasance in office of such under-sheriff in the meantime, as well as before such vacancy, shall be deemed to be a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the bond executed by such under-sheriff to the sheriff by whom he was appointed.

Deputy sheriffs.

493. SEC. 66. Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts, and those of his under-sheriffs, he shall be responsible, and may revoke such appointments at his pleasure; and persons may also be deputized by such sheriff or under-sheriff in writing, to do particular acts, and the sheriff and his sureties shall be responsible on his official bond for the default or misconduct of his under-sheriff and deputies.

Appointments to be in writing.

494. SEC. 67. Every appointment of an under-sheriff or of a deputy sheriff, and every revocation of such appointment, shall be in writing, under the hand of the sheriff, and shall be filed in the office of the clerk of the county; but this section shall not extend to any person who may be deputized by any sheriff or under-sheriff to do a particular act only.

Sheriff to have charge of jails and prisoners.

495. SEC. 68. The sheriff shall have charge and custody of the jails of his county, and of the prisoners in the same, and shall keep them himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable.

Execution of processes, etc., and attendance upon courts.

496. SEC. 69. The sheriff in person, or by his under-sheriff or deputy, shall serve and execute, according to law, all processes, writs, precepts and orders issued or made by lawful authority and to him directed, and shall attend upon the several courts of record held in his county.

Duties as peace officers.

497. SEC. 70. It shall be the duty of the sheriff, and under-sheriffs and deputies, to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner and constable, may call to their aid such person or persons of their county as they may deem necessary.

Transfer of writs, books, papers, etc., to sheriff elect.

498. SEC. 71. Hereafter whenever the term of office of any sheriff shall expire, and the sheriff elect shall file his bond and qualify according to law, the county clerk shall issue a notice setting forth that said sheriff elect has filed his bond and qualified according to law, which notice shall be served by the new sheriff on the former sheriff, whereupon such former sheriff shall immediately transfer and deliver to the new sheriff all the writs, processes, books and papers belonging to his office, except as hereinafter excepted, and also the possession of the court house and jail of his county, and shall take from the new sheriff a receipt specifying the papers so delivered over, and the prisoners in custody, if any, which receipt shall be sufficient indemnity to the person taking the same.

What unfinished business may be completed by sheriff going out of office.

499. SEC. 72. Every sheriff going out of office at the expiration of his term, and having any writ of *fieri facias* or fee bill, which he may have levied but not collected, shall be and is hereby authorized to proceed and collect such execution or fee bill in the same manner as if his term of office had not expired, and the sureties on his official bond shall be liable for any omission of duty in so doing, in like manner as if his said term of office had not expired.

Coroners when performing duties of sheriff.

500. SEC. 73. The provisions of the 71 and 72 sections of this act, shall apply to all coroners whenever by virtue of the laws of the state, they shall be required to perform the duties of sheriff.

Default of deputy sheriff or jailer.

501. SEC. 74. Any default or misconduct in the office of deputy sheriff or jailor, after the death, resignation or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

Action for default may be prosecuted against executors, etc., of sheriff.

502. SEC. 75. Any action for default or misconduct of any sheriff, his under-sheriff, jailor or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

Service of papers upon sheriff.

503. SEC. 76. Every paper required by law to be served on the sheriff may be served on him in person or left at his office during business hours.

Not to act as attorney.

504. SEC. 77. No sheriff, or under-sheriff, or deputy, shall appear or advise as attorney or counselor in any case in any court.

Liability for neglect to make return, etc.

505. SEC. 78. Whenever any sheriff shall neglect to make due return of any writ or process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal, (such fine however, not to exceed two hundred dollars,) and also an action for damages to the party aggrieved.

Penalty for receiving illegal fees.

506. SEC. 79. No sheriff shall directly or indirectly ask, demand or receive for any service to be by him performed in the discharge of any of his official duties any greater fees than are allowed by law, on pain of forfeiture of treble damages to the party aggrieved, and being fined in a sum not less than twenty-five dollars and not more than two hundred dollars.

CORONER.

Election of coroner; bond.

507. SEC. 80. A coroner shall be elected in each county for the term of two years, who shall, before he enters upon the duties of his office, give bond to the people of the state of Colorado in such penal sum not less than two hundred and fifty dollars, nor more than five thousand dollars, with sufficient sureties, to be approved by the board of county commissioners, or if such board be not in session, by the county clerk subject to the approval of such board, the condition of which bond shall

be in substance the same as that given by the sheriff, such bond to be filed with the clerk of the proper county.

When to exercise powers and duties of sheriff.

508. SEC. 81. When there shall be no sheriff in any organized county, it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county, until a sheriff be appointed or elected and qualified; and when the sheriff from any cause shall be committed to the jail of his county, the coroner shall be keeper thereof, during the time the sheriff shall remain prisoner therein.

When to serve and execute process.

509. SEC. 82. Every coroner shall serve and execute process of every kind, and perform all other duties of the sheriff when the sheriff shall be a party to the case, or where affidavit shall be made and filed as provided in the succeeding section, and in all such cases he shall exercise the powers and proceed in the same manner as prescribed for the sheriff, in the performance of similar duties.

In case of affidavit of partiality, etc., of sheriff.

510. SEC. 83. Whenever any party, his agent or attorney, shall make and file with the clerk of the proper court, an affidavit stating that he believes that the sheriff of such county will not by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced or about to be commenced in said court, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done.

Inquests.

511. SEC. 84. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died within his county by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of any person supposed to have died by unlawful means, or the cause of whose death is unknown, found or being in the county, it shall be his duty to summon forthwith six citizens of the county, to appear before him at a time and place named.

Coroner's jury.

512. SEC. 85. If any juror fails to appear, the coroner shall summon the proper number from the by-standers immediately, and proceed to impanel them, and administer the following oath in substance: "You do solemnly swear (or affirm) that you will diligently inquire, and true pre-

sentment make, when, how, and by what means, the person whose body lies here dead came to his death, according to your knowledge and the evidence given you, so help you God."

Witnesses before coroner.

513. SEC. 86. The coroner may issue subpœnas, within his county, for witnesses, returnable forthwith, or at such time and place as he shall therein direct; and witnesses shall be allowed the same fees as in cases before a justice of the peace; and the coroner shall have the same authority to enforce the attendance of witnesses, and to punish them and jurors for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the state.

Oath of witnesses.

514. SEC. 87. An oath shall be administered to the witness in attendance as follows: "You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth, so help you God."

Testimoney to be reduced to writing.

515. SEC. 88. The testimony shall be reduced to writing, under the coroner's order, and subscribed by the witness.

Verdict of coroner's jury.

516. SEC. 89. The jurors, having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands in substance as follows, stating the matters in the following form, suggested as far as found:

STATE OF COLORADO, }
———— COUNTY. }

An inquisition holden at ———, in ——— county, on the —— day of ———, A. D. 18——, before ———, coroner of said county, upon the dead body of ———, or person unknown, lying there dead, by the jurors whose names are hereto subscribed; the said jurors, upon their oaths, do say— (here state when, how, by what person, means, weapon, or accident he or she came to his or her death, and whether feloniously).

In testimony whereof, The said jurors have hereunto set their hands, the day and year aforesaid."

517. SEC. 90. If the inquisition find a crime has been committed on the deceased, and name the person whom the jury believes has committed it, the inquest shall not be made public until after the arrest, directed in the next section. When inquest not to be made public.

518. SEC. 91. If the person charged be present the coroner may order his arrest by an officer or any person, and shall then make a warrant, requiring the officer or other person to take him before a justice of the peace. Warrant of arrest in case party charged be present.

519. SEC. 92. If the person charged be not present and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff, or any constable of the county, requiring him to arrest the person, and take him before a justice of the peace. Warrant of arrest in case party charged be not present.

520. SEC. 93. The warrant of a coroner in the above cases shall be of equal authority with that of a justice of the peace; and when the person charged is brought before the justice he shall be dealt with as a person held under a complaint in the usual form. How person arrested to be dealt with.

521. SEC. 94. The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest, leading to the arrest; and such warrant shall be a sufficient foundation for the proceeding of the justice, instead of a complaint. What shall be recited in warrant of coroner.

522. SEC. 95. The coroner shall then return to the district court the inquisition, the written evidence, and a list of the witnesses who testify material matter. Inquisition to be returned to district court.

523. SEC. 96. The coroner shall cause the body of a deceased person, which he is called to view, to be delivered to his friends, if there be any, but if not he shall cause him to be decently buried and the expenses to be paid from any property found with the body, or if there be none, from the county treasury, by certifying an account of the expenses, which being presented to the board of county commissioners shall be allowed by them if deemed reasonable, and paid as other claims on the county. Disposition of body of deceased person.

524. SEC. 97. When there is no coroner, or in case of his absence or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner, in relation to dead bodies. When justice of the peace to act as coroner.

Post mortem examinations.

525. SEC. 98. In the above inquisition by a coroner, where a jury shall deem it requisite, he may summon one or more physicians or surgeons to make scientific examination, and may allow in such case a reasonable compensation, subject to the confirmation of the board of county commissioners.

COUNTY TREASURER.

Election of county treasurer; amount of bond and how approved.

526. SEC. 99. A county treasurer shall be elected in each county for the term of two years, and shall, before he enters on the discharge of his duties, execute to the people of the state of Colorado a bond, with three or more sufficient sureties, to be approved by the board of county commissioners and in such penal sum as they may direct, which bond, with the approbation of the board indorsed thereon by their clerk, shall be filed in the office of the county clerk; and in case the board of commissioners shall not be in session in time for any county treasurer to present his bond for their approval as above specified, or he shall be unable, from any cause, to present his bond at any regular meeting of the board, after due notice of his election, then it may be lawful for such treasurer to present his bond to the clerk of said board for his approval, and his approval indorsed thereon, shall have the same effect as if done by the board of commissioners, subject nevertheless, to the final decision and approval of the board of commissioners at their first meeting thereafter; and in such case, where the board shall not have fixed the penal sum of such bond, it shall not be less than twice the amount of all moneys directed by the board to be levied in the county, and to be paid to such treasurer during the year.

Condition of bond of county treasurer.

527. SEC. 100. The condition of such bond shall be in substance as follows:

"*Whereas*, The above bounden, —— ——— was elected to the office of county treasurer of the county of ———, on the —— day of ———; *Now, Therefore*, The condition of this obligation is such, that if the said —— ——————— and his deputy, and all persons employed in his office, shall faithfully and promptly perform the duties of said

office, and if the said —— ——— and his deputies shall pay, according to law, all moneys which shall come to his hands as treasurer, and shall render a just and true account thereof, whenever required by said board of commissioners, or by any provision of law, and shall deliver over to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, papers and other things appertaining thereto or belonging to his office, the above obligation to be void, otherwise to be in full force and effect."

Appointment and duties of deputy treasurer

528. SEC. 101. The county treasurer may appoint a deputy, who, in the absence of the treasurer from his office, or in case of vacancy in said office for any disability of the treasurer to perform the duties of his office, may perform all the duties of the office of treasurer, until such vacancy be filled or such disability removed.

Vacancy in office, how filled.

529. SEC. 102. In case the office of county treasurer shall become vacant, the board of county commissioners shall appoint a suitable person to perform the duties of such treasurer; and the person so appointed, upon giving bond, with like sureties and conditions as that required in county treasurers' bonds, and in such sum as said board shall direct, shall be invested with all the duties of such treasurer, until such vacancy shall be filled or such disability removed.

Persons not eligible to hold the office of county treasurer

530. SEC. 103. No person holding the office of sheriff, county judge, county clerk, nor any member of the board of commissioners shall hold the office of county treasurer.

Receipt and payment of moneys belonging to county.

531. SEC. 104. It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid to him. All money received by him for the use of the county shall be paid out by him only on the orders of the board of commissioners, according to law, except where special provision for the payment thereof, is or shall be otherwise made by law.

532. SEC. 105. The said treasurer shall keep a just

Books and accounts to be open to inspection, and exhibited in settlement with commissioners.

and true account of the receipt and expenditure of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose, which books shall be open at all times for the inspection of the board of county commissioners or any member thereof, and to all county and state officers; and at the meeting in July and January, of the said board of commissioners, or at such other time as they may direct, he shall settle with them his account as treasurer, and for that purpose he shall exhibit to them all his books and accounts, and all vouchers relating to the same, to be audited and allowed.

Preference in payment of county orders.

533. SEC. 106. County orders properly attested, shall be entitled to a preference as to payment according to the order of time in which they may be presented to the county treasurer; but where two or more orders are presented at the same time, precedence shall be given to the order of the oldest date, but every county treasurer shall receive in payment of county taxes, county orders issued in said county, which may be presented in payment for such county taxes.

Delivery of books, papers and money to successor in office.

534. SEC. 107. Upon the resignation or removal from office of any county treasurer, all the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon the oath of such preceding treasurer, or in case of his death, upon oath of his executors or administrators.

Penalty for failure to deliver.

If any such preceding county treasurer, or in case of his death, if his executors or administrators shall neglect or refuse to deliver up such books, papers and moneys on oath, when lawfully demanded, every such person shall forfeit a sum of not less than one hundred dollars nor more than five hundred dollars, and be also liable upon his official bond, for such refusal or neglect.

To be collector of taxes.

535. SEC. 108. The county treasurer of each county shall be, by virtue of his office, collector of taxes therein, and shall perform such duties in that regard as are prescribed by law.

536. SEC. 109. It shall be the duty of said county treasurer to assess, at a fair value, the property of any per-

son liable to pay taxes, whom the county assessor has failed to assess, and to place the same on the tax roll, and to collect taxes on the same in the manner provided by law; *Provided, however*, that said treasurer shall not be compelled to assess such property in person; *Provided further*, that he be authorized to administer oaths to such person, or any others, touching the value of said property.

Shall assess property not listed by assessors; may administer oaths touching value of property.

537. SEC. 110. Every county treasurer shall have and keep in his office a cash-book, wherein shall be entered and set down every sum of money paid to him by virtue of his office, and the date of such payment, and the name of the person paying the same, the account upon which the same was paid, and the nature of the funds so paid to him, whether money, state or county scrip, or evidences of state or county indebtedness, and the amount of each separate kind; and such cash-book shall, at all reasonable hours of the day, be open to the inspection and examination of all persons desiring to inspect or examine the same.

Shall keep cash-book.

538. SEC. 111. Upon the payment of any money to him as aforesaid, the county treasurer shall issue his receipt therefor to the person paying the same, setting forth in such receipt all of the matters so as above required to be entered in such cash-book.

Shall receipt to person paying money.

539. SEC. 112. Every county treasurer shall have and keep in his office a book to be called the registry of county orders, wherein shall be entered and set down at the date of the presentation thereof, and without any interval or blank line between any such entry and the one preceding it, every county order or other certificate or evidence of county indebtedness at any time presented to such county treasurer for payment, whether the same is paid at the time of presentation or not, the date and number of such order, the amount for which the same is payable, the date of the presentation thereof, the name of the person to whom such order is by the terms thereof payable, and the name of the person presenting the same. Every such registry of county orders shall at all reasonable hours be open to the inspection and examination of any person desiring to inspect or examine the same.

Shall keep registry of county orders.

Order of disbursements.

540. SEC. 113. Every fund in the hands of the county treasurer for disbursement, shall be paid out in the order in which the orders drawn thereon and payable out of the same, shall be presented for payment.

Monthly payment of state funds to state treasurer.

541. SEC. 114. Every county treasurer shall each year, on or before the tenth day of each month, unless otherwise directed by the auditor of state, pay into the state treasury all money due the state remaining in his hands on the first day of each month, in the same kind of funds in which the same shall have been received.

Penalty for failure or neglect of duties.

542. SEC. 115. Every county treasurer who shall fail, neglect or refuse to have and keep in his office such cash-book as required by section 110 of this act, or to set down therein at the time of the receipt thereof, any moneys by him received or collected as such treasurer, or shall make any false or deficient entry thereof, or shall fail, neglect or refuse to have and keep the said cash-book at his office at all reasonable hours of the day, or shall fail, neglect or refuse to permit any person to inspect and examine the same at any reasonable hour of the day, or shall fail, neglect or refuse to issue his receipt for any moneys received by him as such county treasurer, as required by the one hundred and eleventh section, or shall fail, neglect or refuse to set down in such receipt the kind of funds, whether money or state or county scrip or evidences of state or county indebtedness, or shall fail, neglect or refuse to have and keep in his office such register of county orders as required by section one hundred aud twelve, or shall fail, neglect or refuse to enter therein, at the time of the presentation thereof, every county order which may be presented to him for payment, or shall make any false entry thereof, or shall fail, neglect or refuse to pay any order presented to him for payment, there being then money in the treasury appropriated for the payment thereof, or wherefrom by law the same ought to be paid; or shall pay any such order, there not being then remaining in the treasury money sufficient wherefrom all orders drawn upon the same fund and previously presented, may lawfully be paid, every such county treasurer so offending shall be deemed guilty of a high misdemeanor, and upon convic-

tion thereof, shall be fined in a sum not less than fifty dollars and not more than five hundred dollars, and the court may adjudge that such treasurer be removed from his office. This section shall extend to the deputies of every such county treasurer.

COUNTY SURVEYOR.

543. SEC. 116. A county surveyor shall be elected for a term of two years, who shall give bond to the board of county commissioners, to be approved by the county clerk of the proper county, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties. Election of county surveyor. Bond.

544. SEC. 117. The county surveyor may appoint as many deputies as he thinks proper, for whose official acts he shall be responsible. The certificate of the county surveyor or any of his deputies shall be admitted as legal evidence in any court of the state, but the same may be explained or rebutted by other evidence. May appoint deputies.

545. SEC. 118. It shall be the duty of the county surveyor, by himself or one of his deputies, to execute any survey which may be required by order of any court, or upon application of any individual or corporation. Duties of county surveyor and deputies.

546. SEC. 119. The said surveyor shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided for that purpose by the county, which he shall transmit to his successor in office. He shall also number such surveys progressively, and shall also preserve a copy of field notes and calculations of each survey, indorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with a certificate of survey, shall be furnished by said surveyor, to any person requiring the same. Record and plat of surveys.

547. SEC. 120. If the office of county surveyor be at any time vacant the board of county commissioners are hereby empowered to appoint some suitable person to perform the duties of the office until a county surveyor be elected. Vacancy in office, how filled.

COUNTY ASSESSOR.

548. SEC. 121. A county assessor shall be elected in

Election of county assessor. Bond and oath.

each county, at the general election, who shall give bond to the people of the state of Colorado, with two or more sufficient sureties, in a penal sum not less than two thousand dollars, for the performance of his duties to the satisfaction of the board of county commissioners, and subscribe an oath or affirmation for the faithful performance of his duties as such assessor, and who shall be a qualified elector of said county, and shall hold his office for two years and until his successor is elected and qualified.

Appointment and bond of deputies.

549. SEC. 122. Whenever the board of county commissioners shall be of the opinion that said assessor is unable to perform the duties of his office within the time prescribed by law, they shall require said assessor to appoint one or more deputies, who shall be sworn, and give bond to the principal.

Fees.

550. SEC. 123. Such assessor, and deputy or deputies, shall receive from said county such a sum not exceeding seven dollars per day, for each day of actual service in the discharge of his duties, as the said board of county commissioners may deem right and just.

JUSTICES AND CONSTABLES.

Division of counties into justice's precincts.

551. SEC. 124. The boards of county commissioners, of the several counties of this state, shall at their July meeting next after the passage of this act, divide their respective counties into as many justice's precincts as the necessities of the county may require, and upon petition of the voters of any such precinct, may change the same, or create other such precincts, and shall cause to be entered in the journal of their proceedings a record of such precincts, giving accurate boundaries thereof. There shall be elected at the first election after the passage of this act at which county officers are chosen, and annually thereafter, in each justice precinct, one justice of the peace and one constable, who shall each hold his office for the term of two years; *provided, however*, that the justice's precincts as heretofore established, and now existing under the name of justices' townships, shall be and remain as now established, until the county commissioners shall change the same, and the justices and constables now holding office

Election of justices and constables.

therein shall continue in office until their respective terms shall expire.

552. SEC. 125. Every justice of the peace and constable, before entering upon the duties of his office, shall give bond in the sum of two thousand dollars, payable to the people of the state of Colorado, with sureties to be approved as required by law, and conditioned for the faithful discharge of the duties of his office, and that he will pay over all moneys which may come to his hands by virtue thereof, and shall subscribe the oath of office provided by law, which shall be indorsed on his bond. Bond and oath.

553. SEC. 126. Each justice of the peace shall reside and have his office in the precinct for which he was elected.

MISCELLANEOUS PROVISIONS.

554. SEC. 127. Every sheriff, county clerk, county treasurer and county judge, shall keep his office at the county seat of his county, and in the office provided by the county, if any such has been provided; and if there be none established, then at such place as shall be fixed by special provision of law; or if there be no such provision, then at such place as the board of county commissioners shall direct; and they shall each keep the same open during the usual business hours of each day, Sundays and legal holidays excepted; and all books and papers required to be in their office shall be open for the examination of any person; and if any person or officer shall neglect to comply with the provisions of this section, he shall forfeit for each day he so neglects, the sum of five dollars. Where county offices to be kept. Penalty for refusing examination of books and papers, etc.

555. SEC. 128. Every county officer named in this article shall, before entering upon the duties of his office, on or before the day of the commencement of the term for which he was elected, execute and deposit his official bond, as prescribed by law; and any such officer shall also take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same with his official bond, to be filed and preserved therewith. County officers to file bond and subscribe oath before entering upon duties.

556. SEC. 129. Every deputy appointed to any of said offices shall, before entering upon his duties under such appointment, take and subscribe the like oath of office as Deputies to file bond and subscribe oath before entering upon duties.

that required to be taken by the officer appointing him, and shall deposit the same in the office where the bond of such officer is deposited.

County officers to perform duties until qualification of successor.

557. SEC. 130. When the term of office of any sheriff, coroner, county judge, justice of the peace, constable, county clerk, assessor, county treasurer, county surveyor or other county officers shall expire, as now provided by law, it shall be lawful for such officer, whether re-elected or not, and his deputies, to continue to perform all the duties of such office until his successor shall be duly qualified as required by law.

Payment of taxes, fines, fees, etc., to county treasurer.

558. SEC. 131. Every county clerk, clerk of the district court, district attorney, sheriff, constable, justice of the peace or other state or county officer, by law appointed, required or permitted to receive and pay over to the county treasurer any taxes, fines, fees or other moneys whatsoever, shall, within thirty days after the receipt of such moneys, pay the same over to the county treasurer, and together therewith such officer so paying over the same shall deliver to such treasurer a statement of the amount of such moneys so collected by him and paid over as aforesaid, which statement shall be signed by the person paying the same, and sworn to before such treasurer, and by him filed and preserved in his office. Every person falsely swearing in any such statement shall be deemed guilty of perjury. The county treasurer shall not demand or receive any fee for administering the oath required by this section.

Sworn statement to be made.

Falsely swearing deemed perjury.

Certified copies and transcripts of county judge, clerk or treasurer to be evidence.

559. SEC. 132. Copies of all documents, writs, proceedings, instruments, papers and writings duly filed or deposited in the office of any county judge, county clerk, or county treasurer, and transcripts from books of record or proceedings kept by any of said officers, with the seal of his office affixed, shall be *prima facie* evidence in all cases.

To whom resignations to be made.

560. SEC. 133. All county officers who hold their office by election, shall make their resignation to the officer or officers authorized by law to fill such vacancies in such office, respectively.

Causes for vacancies in county offices.

561. SEC. 134. Every county office shall become vacant, on the happening of either of the following events, before the expiration of the term of office:

First—The death of the incumbent.

Second—His resignation.

Third—His removal.

Fourth—His ceasing to be an inhabitant of the county for which he was elected or appointed.

Fifth—His conviction of any infamous crime, or any offense involving a violation of his official oath.

Sixth—His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath and bond within the time prescribed by law.

Seventh—The decision of a competent tribunal, declaring void his election or appointment.

Powers and compensation of any officer performing the duties of another

562. SEC. 135. Whenever any justice of the peace shall be required to act as coroner in any case, or any coroner shall be required to act as sheriff, or any other officer in this state shall be required to perform any duties belonging to any other office, he shall, for the time being, have the same powers in respect to that duty, as are given by law to the officer whose duties he shall perform, and shall be entitled to receive the same compensation for his services.

Official bonds, to whom payable and to whose use action to lie.

563. SEC. 136. Every official bond of any county officer, where not otherwise provided by law, shall be payable to the people of the state of Colorado, and an action shall lie thereon to the use of any party aggrieved, in the name of the people.

Penalty for person consenting to election and refusing to qualify.

564. SEC. 137. Any person who shall be hereafter elected or appointed to any county or precinct office in any county in this state, [who] shall refuse to qualify, he or they consenting to such election or appointment, shall be liable to a fine not exceeding one hundred nor less than twenty-five dollars, at the discretion of any court having competent jurisdiction, and all such fines shall be recoverable before any court in this state, in the name of the county in which the case or cases may arise, and shall be appropriated to the use of the school fund of said county.

Disposition of fines.

County attorney.

565. SEC. 138. The board of county commissioners of the several counties are authorized, when they think the interest of the county requires it, to employ an attorney, who shall be a person learned in the law, and be at least twenty-one years of age.

Insufficient bond.

566. SEC. 139. Whenever the board of county commissioners of any county in this state, shall deem the bond given by the sheriff or other officer of the county insufficient, or whenever in their opinion the sureties on said bond are insolvent or permanently removed from the county, or whenever they for any other reason shall consider said bond insufficient for the public security, it shall be lawful for them to require of said sheriff or other officer, a new bond, with such sureties and so conditioned as required by law in the first instance.

Vacancy to be declared in case of refusal or neglect to give new bond.

567. SEC. 140. In case any sheriff, or other officer, shall refuse or neglect, for a period longer than thirty days after receiving notice so to do, to give a new bond as heretofore required, then, in that case, it shall be lawful for said board of county commissioners to declare the office vacant, and appoint some other person to fill the vacancy, who shall hold the office until a successor is elected or appointed.

No taxation for erection of public buildings in counties attached to others for judicial purposes.

568. SEC. 141. The people of no county in the state shall be taxed for the erection of any public buildings in the county to which they may be attached for judicial purposes.

Repeal.

569. SEC. 142. Chapter twenty-one, of the revised statutes: an act to provide for the appointment of attorneys, approved February 6, 1872; an act in relation to the publishing of detailed statements by the county commissioners, approved February 6, 1872; an act to authorize county commissioners to require new bonds from sheriffs and other county officers in certain cases, approved February 9, 1872; an act to authorize the funding of the debt of the several counties of Colorado territory, approved February 11, 1874, and an act relating to county commissioners, approved February 13, 1874, are severally hereby repealed.

Not to impair prior rights.

570. SEC. 143. Said repeal shall not impair or affect any act done, or any right accruing, or accrued, or acquired, under the laws existing and herein repealed.

Approved, March 24, 1877.

CHAPTER XXIII.

COUNTY COURTS.

AN ACT TO REPEAL ALL EXISTING LAWS IN RELATION TO THE ORGANIZATION, JURISDICTION, POWERS, PROCEEDINGS AND PRACTICE OF THE COUNTY COURTS OF THE STATE OF COLORADO, AND TO ENACT OTHER PROVISIONS IN LIEU THEREOF.

Be it enacted by the General Assembly of the State of Colorado:

571. SECTION 1. The county courts of the several counties of this state shall, hereafter have concurrent jurisdiction with the district courts in all civil actions, suits and proceedings whatsoever, where the debt, damage or claim, or the value of the property involved shall not exceed two thousand (2000) dollars, except as otherwise provided in this act; *Provided, however*, that the limit of jurisdiction above named shall not apply in causes relating to the estates of deceased persons. Jurisdiction.

572. SEC. 2. In order to give the said courts jurisdiction in any action, suit or proceeding, the complaint or complaints shall state that the value of the property in controversy or the amount involved, for which relief is sought in such action, suit or proceeding, does not exceed the said sum of two thousand (2000) dollars. And in all actions for divorce, the petition or bill of complaint shall aver that the plaintiff does not ask or seek alimony, in excess of the said sum of two thousand (2000) dollars. What to be stated in complaints.

573. SEC. 3. There shall be held annually in each of the counties of Arapahoe, Weld, El Paso, Park, Saguache, Summit and Rio Grande, six terms of the county court, commencing on the first Monday in the months of January, March, May, July, September and November. In each of the remaining counties of the state there shall be held annually four terms of the said court, commencing on the first Monday in the months of March, June, September and December. Terms.

574. SEC. 4. The judges of the said county courts, may each appoint a clerk, whose powers and duties shall be similar to the powers and duties of the clerks of the district courts, and he shall receive such fees and compen- Appointment of clerk.

sation, as is now or hereafter may be provided by law. Or if any of the said judges prefer so to do, they may elect to perform the duties of clerk, and receive the compensation and fees therefor, and in such cases all processes issued from said court, shall be issued by, and in the name of the judge thereof, and under the seal of said court. If any clerk shall be appointed as aforesaid, he shall qualify and give bond as clerks of the district court are required to do, and be subject to the same liabilities as are or may be provided by law, in relation to the clerks of the district courts.

Judge may perform duties of clerk.

Appeals.

575. SEC. 5. Appeals may be taken from all final judgments or decrees of said county courts to the district court of the same county, by any one or more of the parties against whom any such final judgment or decree may have been rendered: *Provided*, that in cases where such judgment or decree shall have been rendered for the payment of money, the party desiring such appeal shall, within a reasonable time, to be fixed by the court, give good and sufficient bond with one or more sureties, to be approved by the judge or clerk of the said court, in double the amount of the judgment or decree appealed from, conditioned for the prosecution of the appeal with effect, and without delay, and for the payment of all costs and whatever judgment may be awarded against the party so appealing, on the trial or dismissal of said appeal in the appellate court, and for the payment of the judgment appealed from, in case said appeal shall be dismissed: *Provided, further*, that if the judgment or decree shall not be for the payment of money, the penalty of the bond shall be in such sum as the county court shall deem sufficient to cover costs, expenses and damages, and be conditioned that the party appealing shall abide, fulful and perform whatever judgment may be rendered against him in that cause by the district court, and for the payment of all damages which the opposite party may sustain by reason of such appeal and the delay incident thereto, and for the payment of the costs.

Bond to be given

Proceedings in appellate court to be *de novo*.

576. SEC. 6. In all appeals provided for in the foregoing section, the proceedings in the appellate court shall be in all respects, *de novo*. Said appellate court shall consider

and pass upon all objections to the pleadings and proceedings in the said cause, which may have been made in the county court, and make such orders and render such judgments or decree as shall be meet and proper, in the same manner as though such cause had been originally begun in said district court; and the defendant where judgment has been rendered by default, shall have a right to plead any and all defenses, which he might have pleaded had the cause been originally brought in the district court; all such causes shall be conducted in the same manner as if originally brought in the district court: *Provided*, that no exception shall be taken or allowed to the form of the process issued from the county court, or the manner of serving the same, if the party or parties taking such exceptions entered his, her or their appearance in the county court; and, *provided, further*, that no appeal shall be dismissed on account of a defect, or informality in the appeal bond or the insufficiency thereof, if the appellant or appellants shall, within a reasonable time, to be fixed by the court file a good and sufficient bond.

When appeal not to be dismissed for informality or insufficiency.

577. SEC. 7. Nothing in this act contained shall be construed to authorize or allow the taking of any appeal to the district court, from any judgment given in the county court, on an appeal from a justice of the peace.

In what case no appeal authorized.

578. SEC. 8. Writs of error shall lie from the supreme court, to every final judgment or decree of any of the county courts, and shall be prosecuted and disposed of in the same manner as writs of error to the final judgment or decree of the district court. And in all cases where the final judgment or decree exclusive of the cost shall exceed twenty dollars, the unsuccessful party, if no appeal be taken to the district court as above herein provided, may prosecute an appeal to the supreme court in the same manner in all respects, as appeals are prosecuted from final judgments in the district courts. In the prosecution of writs of error, as aforesaid, any judge of the supreme court may grant an order for a *supersedeas* in the same manner as in cases of writs of error to the district courts.

In what manner appeals or writs of error to be presented.

579. SEC. 9. Changes of venue from any of the county courts may be taken for the same causes as provided for

Changes of venue. When to be taken to district court.

changes of venue in the district courts, and the venue in all cases, shall be changed to the county court of any adjacent county, wherein the cause or causes necessitating such change do not exist; *Provided*, that if no substantial objection is shown to exist thereto, the venue shall be changed to the district court of the same county.

Jurors; number and how to be paid.

580. SEC. 10. In any action pending before the county court, either party may have a jury summoned to try the same, by advancing fees for the payment of such jurors, and when judgment shall be rendered in favor of the party demanding a trial by jury, such party shall recover the fees paid by him for such jurors, of the adverse party, and have the amount thereof taxed as a part of the costs in the case. The said jury shall consist of such number, not less than three, nor more than twelve, as the party demanding a jury trial may direct; but in all cases where a less number than twelve may be so directed, the adverse party may have the same increased to any number not exceeding twelve, by advancing the additional fees necessary for such increased number; and in no event shall such additional fees be taxed as costs in the case. Should any such jury trial occupy more than one day, the compensation for the jury for such additional day or days shall be taxed as costs in the case, and abide the event of the suit. Jurors in such cases shall be summoned by an open *venire*, directed to the sheriff of the county, in pursuance of and in accordance with such orders, rules and regulations as may be hereafter made and adopted by the several courts respectively; and jurors summoned shall be allowed the same compensation as allowed to jurors in the district court.

Seal.

581. SEC. 11. The county commissioners for each and every county wherein no seal has been provided for the county court of such county, shall at once provide a seal for such court; but any court possessing no seal may use a scrawl for a seal, until a seal shall be provided, as aforesaid; and in any case where the county court is using the territorial seal of the probate court, the county commissioners shall provide a new and proper seal.

Powers.

582. SEC. 12. In addition to the judical powers conferred in the preceeding sections, the said county judges

shall have, possess and exercise, within their respective counties, the following powers, to wit:

First—Power to administer all oaths or affirmations, concerning any matter or thing before them.

Second—To issue and grant letters of administration, letters testamentary, and letters of guardianship, and repeal the same.

Third—To take probate of wills and record the same.

Fourth—To determine the person or persons entitled to letters of administration, or to letters testamentary, and in general to do and perform all things concerning the granting of letters testamentary, or of administration, or of guardianship.

Fifth—To receive, file and record inventories, appraisement bills and sale bills, as is required by the existing laws, or laws hereafter to be enacted.

Sixth—To require executors, administrators, and guardians to exhibit and settle their accounts, and to settle for the estates and property in their hands, and for that purpose they may issue citations and attachments into every county in this state, to be executed by the sheriffs of said counties.

Seventh—To take and certify acknowledgments and proofs of deeds, and other instruments; to take affidavits, and depositions, and to administer oaths to the same extent and with like effect, as justices of the peace.

583. SEC. 13. The said county judges shall sit in their respective counties, throughout this state, on the last Monday of every month, and hold what shall be termed the county court, for probate business, and may sit at such other times for the same purpose as they may deem expedient or needful, and continue to sit from time to time, as may be deemed needful or proper. The said judges may issue, or cause to be issued by the clerk of the county court, all process deemed necessary for any purpose, under the seal of the court. All such processes shall bear date when issued. Every county judge shall record, or cause to be recorded, all his proceedings in relation to probate matters, to be entered at length in a book or books, for that purpose

Probate matters.

to be furnished by the board of county commissioners upon the request of any such judge.

Appeals in probate matters.

584. SEC. 14. All questions of law and of fact, relating to probate matters in any county, shall be determined by the county court of such county, when sitting for probate business as aforesaid, if properly brought before such court, and from any and all such decisions upon any such questions, appeals or writs of *certiorari*, shall be [lie] to the district court of the same county, in favor of any one or more parties against whom such question or questions may have been decided, to be prosecuted by such person or persons, in the same manner as appeals and writs of *certiorari* respectively, when prosecuted from the decisions of justices of the peace.

When private seal of judge valid.

585. SEC. 15. Letters of administration, letters testamentary, and all process, certificates, and all other papers, made or issued by county judges, to which the private seal of such judge is or may be affixed, because of there being no public seal, shall be as valid to all intents and purposes as though a public seal had been used.

Suit on bond of administrators, etc.

586. SEC. 16. Administrators and executors, and their sureties, may be sued on their bond in the county court, subject to the limitation contained in this act.

Records in probate matters.

587. SEC. 17. The county judges shall make, keep and preserve complete records of all wills, testaments and codicils, and the probate thereof; all letters testamentary and of administration, and all bonds taken of executors and administrators, and shall file and preserve the originals of the aforesaid papers, and all inventories, appraisements, sale bills and other exhibits presented to and received by said courts, appertaining to the administration and settlement of estates, and shall enter on their order books the amounts of all such inventories, appraisements, sale bills and other exhibits, under a proper heading for easy reference; and shall enter upon their books of record all matters, controversies and suits that shall arise for decision or adjudication before them, with the names of the parties, and the judgment or opinion of the court, in order that there may be no difficulty in taking appeals.

588. SEC. 18. It shall be the duty of each and every

county judge to enter or cause to be entered in the proper books of his office, a full and perfect record of all orders, judgments and decrees, which may be made by such officer, when acting in reference to probate matters as aforesaid, and the duties of county judges; and for failure or neglect so to do, before the expiration of ten days from the time of making the same, he shall be held guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than one hundred dollars.

Penalty for failure to keep records.

589. SEC. 19. All such entries as specified in the two preceding sections, made by any county judge, or a certified copy thereof given by the said county judge or the clerk of the court, if there be a clerk, shall be good evidence, where evidence is required of such entries and proceedings, in all courts of this state.

Entries in records or certified copies thereof to be evidence.

590. SEC. 20. Every county judge shall have power to issue all process necessary to enforce the judgments and decrees of said court, which process shall be directed to the sheriff of the county; and any sheriff to whom such process shall be directed, is hereby authorized and required to execute the same, and they shall be entitled to the same fees as are allowed for serving like process from the district court.

Sheriff to serve process.

591. SEC. 21. The county judges shall keep well bound books, to be furnished by the board of county commissioners, and enter therein the accounts of executors and administrators, so as to make the same complete records of all accounts allowed and all settlements of estates made in said courts.

County commissioners to furnish books.

592. SEC. 22. All letters testamentary, letters of administration, either with or without the will annexed, letters of administration to collect, and *de bonis non*, writs, summonses, citations, subpœnas, and all other processes, which at any time may be made or issued by the judge of probate, in the discharge of his duties, shall be made and issued in the name of the people of the state of Colorado, [and] bear test in the same manner as other processes issued out of the county court.

Writs, letters, etc., to issue in name of the people.

593. SEC. 23. The county judges in their respective counties shall have jurisdiction and authority to hear and

Jurisdiction and authority in probate matters.

determine all causes, matters and controversies testamentary which shall be brought before them, touching the proof of wills, testaments and codicils, and may grant probate thereof; and shall hear and determine the right of administration of estates of persons dying intestate, and do all other things touching the granting of letters testamentary, and of administration, and the settlement of estates.

Settlement of accounts of executors, etc., removing from the state.

594. SEC. 24. When any executor or administrator, appointed in this state, shall remove without the limits of this state, it shall be the duty of the county judge of the proper county, upon affidavit being filed of such removal by any person interested in the estate in the hands of the executor or administrators so removing, to cause notice to be published in some newspaper of the county, or if there be none, then by posting the same at the court house door of the proper county, stating that said affidavit has been filed, and notifying the said executor or administrator to appear before him within thirty days after the date of said notice, and make a settlement of his accounts as now required by law; and in case said executor or administrator shall neglect or refuse to make said settlement as aforesaid, it shall be the duty of said county judge to remove said executor or administrator from office, and to supply the vacancy as now directed by law in other cases.

Repeal. Not to affect prior rights.

595. SEC. 25. Chapter seventy-one of the revised statutes of Colorado territory, and all other laws or parts of laws, enacted since the first day of January, A. D. 1869, by the legislature of the late territory of Colorado, relating to organization, jurisdiction, powers, proceedings or practice of probate courts, and all other laws and parts of laws inconsistent herewith, are hereby repealed. But the repeal of such laws and parts of laws shall not be construed to impair, affect or divest any right accrued or accruing thereunder; and all laws and parts of laws hereby repealed, shall remain in force for the purpose of completing all suits, causes of action, processes or proceedings, of whatsoever nature, kind or description, now pending thereunder, or which may be begun and unfinished prior to the time this act shall take effect. *Provided,* that nothing herein contained shall be held to repeal any portion of the exist-

ing laws relating to wills, executors or administrators, except so far as the same shall be in conflict with this act.

Approved, March 22, 1877.

CHAPTER XXIV.

CRIMINAL CODE.

[Revised Statutes, Chapter XXII.]

DIVISION I. PERSONS CAPABLE OF COMMITTING CRIMES.

Crime or misdemeanor defined.

596. SECTION 1. A crime or misdemeanor consists in a violation of a public law in the commission of which there shall be an union or joint operation of act, and intention or criminal negligence.

Intention, how manifested.

597. SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

Who of sound mind.

598. SEC. 3. A person shall be considered of sound mind who is neither an idiot, nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good or evil.

Infants not to be found guilty.

599. SEC. 4. An infant under the age of ten years shall not be found guilty of any crime or misdemeanor.

Insane person not to be found guilty of crime.

600. SEC. 5. A lunatic or insane person without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged; *Provided*, the act so charged as criminal shall have been committed in the condition of insanity.

Idiot not capable of crime.

601. SEC. 6. An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.

Person encouraging infant, lunatic or idiot to commit crime to be prosecuted as principal.

602. SEC. 7. Any person counselling, advising or encouraging an infant under the age of ten years, lunatic or idiot, to commit any offense, shall be prosecuted for such offense when committed, as principal, and, if found guilty, shall suffer the same punishment that would have been inflicted on such person counselling, advising or encouraging

as aforesaid, had he or she committed the offense directly, without the intervention of such infant, lunatic or idiot.

When married woman not to be found guilty of crime.

603. SEC. 8. A married woman acting under the threats, command or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable with death, provided it appears from all the facts and circumstances of the case that violent threats, command or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

When drunkenness an excuse for crime.

604. SEC. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkeness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offense, in which case the person or persons so causing said drunkenness for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she or they had been possessed of sound reason and discretion,

Accidental acts. Offenses against person of magistrate or officer, or public property. (Amendment 1877.)

605. SEC. 10. Acts committed by misfortune or accident, shall not be deemed criminal where it satisfactorily appears that there was no evil design or intention, or culpable negligence. Criminal offences committed against the person of a magistrate, police or other public officer acting in discharge of his duties or against public property, shall be deemed to have been committed under agravating circumstances, and it shall be the duty of the court to regulate the penalty accordingly.

Person committing crime under threats, etc., not to be punished.

606. SEC. 11. A person committing a crime or misdemeanor not punishable with death, under threats or menaces which sufficiently show that his or her life or member was in danger, or that he or she had reasonable cause to believe and did believe that his or her life or member was in danger, shall not be found guilty; and such threats or menaces being proved and established, the person or persons compelling by such threats or menaces, the commission of the offense shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

607. SEC. 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offense during the continuance of the lunacy or insanity. If after verdict of guilty and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue, and if after judgment and before execution of the sentence, such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the insanity or lunacy. In all these cases it shall be the duty of the court to impanel a jury to try the question whether the accused be at the time of impanelling insane or lunatic.

Trial and punishment of person becoming insane after commission of crime.

DIVISION II. ACCESSORIES TO CRIMES.

608. SEC. 13. An accessory is he or she who stands by and aids, abets or assists, or who, not being present, aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal and punished accordingly. An accessory during the fact, is a person who stands by, without interfering or giving such help as may be in his or her power to prevent a criminal offense from being committed: *Provided*, that an accessory during the fact, shall be a competent witness unless disqualified from other causes.

When accessory liable to punishment as principal (Amendment, 1877.)

Accessory during the fact, competent witness.

609. SEC. 14. An accessory after the fact, is a person who, after a full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person found guilty of being an accessory during or after the fact, shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime, but if the crime has been committed against the person of a magistrate, of a police or other public officer in the discharge of his duties, it shall be an aggravating circumstance, and the penalty shall be regulated accordingly.

Accessory after the fact. (Amendment, 1877.)

Penalty if found guilty as accessory during or after the fact.

DIVISION III. WHO MAY BE WITNESSES IN CRIMINAL CASES.

When parties injured are competent witnesses.

610. SEC. 15. The party or parties injured shall in all cases be competent witnesses, unless he, she or they shall be rendered incompetent by reason of his, her or their infamy or other legal incompetency other than that of interest. The credibility of all such witnesses shall be left to the jury as in other cases.

Approvers not competent.

611. SEC. 16. Approvers shall not be allowed to give testimony.

False affirmation of witness deemed perjury.

612. SEC. 17. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit wilful and corrupt perjury.

DIVISION IV. OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

Murder defined.

613. SEC. 18. Murder is the unlawful killing of a human being in the peace of the people with malice aforethought, either express or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting or by any other of the various forms or means by which human nature may be overcome and death thereby occasioned.

Malice express.

614. SEC. 19. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice implied.

615. SEC. 20. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person or persons convicted of the crime of murder shall be death.

Manslaughter.

616. SEC. 21. Manslaughter is the unlawful killing of a human being without malice express or implied, and without any mixture of deliberation whatever. It must be voluntary, upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible or involuntary in the commission of an unlawful act, or a lawful act without due caution or circumspection.

617. SEC. 22. In cases of voluntary manslaughter

there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing. Provocation in cases of voluntary manslaughter.

618. SEC. 23. The killing must be the result of that sudden violent impulse of passion supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given, and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder. When voluntary manslaughter punished as murder.

619. SEC. 24. Involuntary manslaughter shall consist in the killing of a human being without any intent so to do, in the commission of an unlawful act or a lawful act which probably might produce such a consequence, in an unlawful manner: *Provided, always,* That where such involuntary killing shall happen in the commission of an unlawful act which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder. Involuntary manslaughter defined. When deemed to be murder.

620. SEC. 25. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the pentientiary for a term not exceeding ten years. Manslaughter, how punished.

621. SEC. 26. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered, in the computation of which the whole of the day on which the hurt was done shall be reckoned the first. When death must ensue to make killing murder or manslaughter.

622. SEC. 27. If the injury be inflicted in one county, and the party die within another county or without the state, the accused shall be tried in the county where the cause of death was administered. And if the party killing shall be in one county, and the party killed be in another county at the time the cause of death shall be administered, the accused may be tried in either county. Trial may be had where cause of death was administered.

623. SEC. 28. Justifiable homicide is the killing of a human being in necessary self-defense, or in the defense of Justifiable homicide defined.

habitation, property or person, against one who manifestly intends or endeavors by violence or surprise to commit a known felony, such as murder, rape, robbery, burglary and the like, upon either person or property, or against any person or persons who manifestly intend and endeavor in a violent, riotous or tumultuous manner, to enter the habitation of another, for the purpose of assaulting or offering personal violence to any person dwelling therein.

A bare fear not sufficient justification. (Amendment, 1877.)

624. SEC. 29. A bare fear of any of these offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge. And if the person killed was a magistrate, a police, or other public officer, it must appear also that the slayer was not the assailant, and that the person killed was not acting in the discharge of his duties.

In what case self-defense a justification.

625. SEC. 30. If a person kill another in self defense, it must appear that the danger was so urgent and pressing, that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary. And it must appear also, that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any further struggle before the mortal blow was given.

When killing justifiable.

626. SEC. 31. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting or other crime, denominated felony by the common law, and he or they be resisted in the endeavor to take the person accused and to prevent the escape of the accused, by reason of such resistance, he or she be killed, the officer or private person so killing, shall be justified; *provided*, That such officer or private person previous to such killing shall have used all reasonable efforts to take the accused, without success, and that from all probability there was no prospect of being

able to prevent injury from such resistance, and the consequent escape of such accused person.

627. SEC. 32. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertency or negligence in the party killing. An officer who in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must however in the performance of his duty proceed according to the sentence and the law of the land. Execution of sentence of death upon criminal justifiable.

628. SEC. 33. Excusable homicide by misadventure is when a person is doing a lawful act without any intention of killing, yet unfortunately kills another; as where a man is at work with an axe, and the head flies off and kills a bystander; or where a parent is moderately correcting his child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of reason or moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case. Excusable homicide defined.

629. SEC. 34. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide. In what other instances homicide justifiable or excusable.

630. SEC. 35. The homicide appearing to be justifiable or excusable, the person indicted, shall, upon his trial, be fully acquitted and discharged. When person accused of homicide to be acquitted.

631. SEC. 36. The killing being proved, the burden of proving circumstances of mittigation, or that justify, or excuse the homicide will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide. Burden of proof in mitigation devolves upon accused.

632. SEC. 37. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come Punishment for concealment of death of bastard infant.

to light, whether it shall have been murdered or not; every such mother being convicted thereof shall suffer imprisonment in the county jail for a term not exceeding one year; *Provided, however*, That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

No distinction between petit treason and murder.

633. SEC. 38. The distinction between petit treason and murder is hereby abolished. Any person who might have been indicted for petit treason shall hereafter be indicted for murder, and if convicted, be punished accordingly.

Punishment of principal or seconds in duels resulting in death.

634. SEC. 39. If any person hereafter shall wilfully and maliciously, or by agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and in so doing, shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof, within a year and a day thereafter; every such offender, his second, as well as the second of the person killed, and all aiders, abettors, and counselors, being thereof duly convicted, shall be considered to have committed a high misdemeanor, and shall be punished by confinement to labor in the penitentiary for any term not exceeding five years nor less than one year.

Penalty for sending or accepting challenge.

635. SEC. 40. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either, or if any person shall accept a challenge or agree to fight a duel; every person so offending, shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust or emolument, either civil or military, under the government of this state, and be fined in a sum not exceeding five hundred dollars.

Penalty for conveying challenge or acting as second.

636. SEC. 41. If any person shall willingly or knowingly carry or deliver any written challenge, or verbally deliver any message intended as, or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid, as second or aid, or give countenance thereto; such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case

of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abettors or counselors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message intended as, or purporting to be a challenge, or for being present at the fighting of any duel as second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument, or weapon, with which the duel shall be fought, or intended to be fought so that it be alleged in the indictment, that the engine, weapon or instrument was deadly, the probable consequence of fighting with which, might be the death of either of the parties.

What allegations unnecessary in indictment.

637. SEC. 42. Every person who shall wilfully and maliciously administer or cause to be administered to or taken by any person, any poison or other noxious or destructive substance, or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year, and not more than ten years; and every person who shall administer or cause to be administered or taken, any such poison, substance or liquid, or who shall use, or cause to be used, any instrument of whatsoever kind, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars; and if any woman by reason of such treatment shall die, the person or persons administering or causing to be administered such poison, substance or liquid, or using or causing to be used any instrument as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished accordingly, unless it appear that such miscarriage was procured or attempted by or under advice of a physician or surgeon, with intent to save the life of such woman or to prevent serious and permanent bodily injury to her.

Punishment for administering poison with intent to cause death, or using instrument to produce miscarriage.

638. SEC. 43. Mayhem consist in the unlawfully depriving a human being of a member of his or her body, or

Mayhem defined

disfiguring or rendering it useless. If any person shall unlawfully cut out, or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily and of purpose, put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than three years: *Provided*, that no person shall be found guilty of mayhem, where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had in good faith, endeavored to decline further combat. But in all other cases, where the fact shall happen in actual fight, the party accused being thereof duly convicted, shall be adjudged guilty of a high misdemeanor and punished by imprisonment in the penitentiary not exceeding one year, and be fined not exceeding one thousand dollars.

Rape.

639. SEC. 44. Rape is the carnal knowledge of a female, forcibly and against her will. Every male person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child, under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape, shall be punished by confinement in the penitentiary for a term not less than one year, and such imprisonment may extend to life.

Not necessary to prove emission.

640. SEC. 45. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

Punishment of crime against nature.

641. SEC. 46. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and such imprisonment may extend to life.

Assault

642. SEC. 47. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.

Punishments for assaults to commit murder, robbery, etc., or to do bodily injury.

643. SEC. 48. An assault with an intent to commit murder, rape, mayhem, robbery or larceny, shall subject the offender to confinement in the penitentiary for a term

not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a high misdemeanor, and any person thereof duly convicted, shall be fined in a sum not exceeding two thousand dollars, and imprisoned not exceeding one year, in the county jail.

Assault and battery.

644. SEC. 49. Assault and battery is the unlawful beating of another.

False imprisonment; punishment for.

645. SEC. 50. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority; any person convicted of false imprisonment shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail.

Kidnapping.

646. SEC. 51. Kidnapping is the forcible abduction, stealing away, or secreting of a man, woman, or child.

Punishment for kidnapping.

647. SEC. 52. Every person found guilty of kidnapping, shall be confined in the penitentiary for a term not less than one year and not more than seven years, for each person kidnapped, or attempted to be kidnapped. In the case of the kidnapping of any magistrate, police or other public officer, to prevent him from discharging his duties, the person or persons found guilty, shall, on conviction, be confined in the penitentiary for a term not less than five nor more than ten years, and shall be liable to damages to the state, county or town, and to the magistrate, police or other public officer so offending.

Punishment for abduction of women.

648. SEC. 53. Whosoever shall, by force or fraud, take away or detain against her will, any woman of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding six (6) years, and not less than one (1) year, with or without hard labor.

649. SEC. 54. Whosoever shall unlawfully take or cause to be taken, any unmarried girl, being under the age

Punishment for abduction of unmarried girl under sixteen years of age.

of sixteen (16) years, out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding three (3) years, with or without hard labor.

DIVISION V. CRIMES AND OFFENSES AGAINST HABITATIONS AND OTHER BUILDINGS.

Arson defined; punishment for; resulting in death deemed murder.

650. SEC. 55. Every person who shall wilfully and maliciously burn or cause to be burned any dwelling house, kitchen, office, shop, barn, stable, storehouse, warehouse, factory, mill, pottery or other building, the property of any other person, or any church, meeting-house, school-house, state-house, court-house, work-house, jail or other public building; or any boat or other water craft; or any bridge of the value of fifty dollars erected across any of the waters of this state; such persons so offending shall be deemed guilty of arson, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of any such burning as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

Punishment for wilfully and maliciously setting buildings on fire.

651. SEC. 56. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with the intent to burn or destroy the same, shall be deemed guilty of a high misdemeanor, and upon conviction thereof shall be imprisoned in the penitentiary for a term not exceeding two years, and be fined in a sum not exceeding one thousand dollars.

Burglary defined; punishment for. (Amendment, 1877.)

652. SEC. 57. Every person who shall in the night time, wilfully and maliciously and forcibly break and enter or wilfully and maliciously without force (the door or any window being open) enter into any dwelling house, kitchen, office, shop, store-house, ware-house, malt-house, stilling-house, banking-house, hotel, saloon, mill, pottery, factory, water craft, railroad car, church or meeting-house,

with intent to commit murder, robbery, rape, mayhem, larceny, or other felony or misdemeanor, or who being lawfully within any room or apartment of any of the buildings aforesaid, shall with like intent, either with or without force, enter into any other room or apartment of the same building shall be deemed guilty of burglary, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

DIVISION VI. CRIMES AND OFFENSES RELATIVE TO PROPERTY.

653. SEC. 58. Robbery is the felonious and violent taking of money, goods or other valuable thing from the person of another by force or intimidation. Every person guilty of robbery shall be punished by confinement in the penitentiary for a term not less than three years nor more than fourteen years. Robbery; punishment for.

654. SEC. 59. Larceny is the felonious stealing, taking and carrying, leading, riding or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money, or other personal property, or those means or muniments by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the daytime, shall be deemed larceny. Larceny may also be committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing, of value to the owner. Every person convicted of larceny, where the article or thing or things stolen, shall be of the value of twenty dollars, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years. Larceny; punishment for.

655. SEC. 60. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall upon conviction be punished by confinement in the penitentiary for any term not less than one year nor more than ten years; and every such person may be Punishment for receiving stolen property.

tried, convicted and punished, as well before as after the trial of the principal. No person convicted of larceny, or of buying or receiving goods or other things obtained by larceny, burglary or robbery, shall be condemned to the penitentiary, unless the money or value of the things stolen, bought or received, shall amount to twenty dollars.

Restoration of stolen property to owner.

656. SEC. 61. All property obtained by larceny, robbery or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property; such owner may maintain his action not only against the felon, but against any person in whose possession he may find the same.

Punishment for branding or defacing brand of stock.

657. SEC. 62. Every person who shall mark or brand alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with the intent thereby to steal the same, or to prevent identification thereof by the true owner, shall on conviction thereof be punished by confinement in the penitentiary for a term not less than one year nor more than five years; *provided*, that no person shall be condemned to the penitentiary under this section unless the value of the property affected shall amount to twenty dollars. And in case the value of the property affected by the offenses herein described, or by larceny, or by buying or receiving goods, or other property obtained by larceny, burglary or robbery shall not amount to five dollars, then the offender shall be punished by imprisonment in the county jail for a term not exceeding six months, or fined not exceeding one hundred dollars.

Embezzlement; punishment for.

658. SEC. 63. Every servant, officer or person employed in any public department, station or office of the government in this state or any county of this state, or in any office of a corporate body, who shall embezzle, steal, secrete or fraudulently take and carry away any money, goods, chattels, effects, book or books of record or of account, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money or property of whatever description it may

be, being the property of said state, county or corporate body, shall on conviction be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

659. SEC. 64. If any officer or person who now is or hereafter may be intrusted by law to collect, disburse, receive or safely keep any money or moneys, revenue or revenues, belonging to this state, to the school fund of this state, to the school fund of any county or township, to any county in this state, to any canal, turnpike or railroad fund of this state, or any county thereof, or to any fund for the improvement of any public road, river, creek or other watercourse bordering on or within this state, or to any other fund now in being or hereafter to be established by law for public purposes, shall fail or refuse to pay over all moneys, warrants, bills, notes and orders, which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall receive for safe keeping belonging to this state, or to any county of this state, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such moneys, warrants, bills, notes or orders, ought by law to be paid over, or his or their attorney or agent, duly authorized in writing, signed and acknowledged if such demand be practicable; every such officer or person shall on conviction thereof be punished by confinement in the penitentiary for a term not less than one year nor more than ten years: *Provided*, That no person shall be committed to the penitentiary under this section, unless the money not paid over shall amount to one hundred dollars or it appear that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this state.

Punishment for officer entrusted with public funds, failing to pay over to successor.

660. SEC. 65. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any other writing

Punishment for malicious or fraudulent destruction or effacing of deed or other instrument in writing.

sealed, or any public record of any such writing or any bank bill, or note, check, warrant for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this state or of the United States or any of them, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit or other demand, or any transfer or assurance of money, stock, goods, chattels or other property, or any letter of attorney or other power, or any day-book or other book of account, or any agreement or contract whatsoever, with the intent to defraud, prejudice or injure, any person or body corporate, shall upon conviction thereof be punished by confinement in the penitentiary for a term not less than one year nor more than five years.

Punishment for cutting or removing boundary tree or alndmark.

661. SEC. 66. Every person who shall knowingly, maliciously and fraudulently cut, fell, alter or remove any certain boundary tree or other allowed landmark, to the wrong of his neighbor, or any other person, shall on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail for a term not exceeding three months.

Breach of trust deemed and punished as larceny.

662. SEC. 67. If any clerk, apprentice or servant, whether bound or hired, to whom any money, bank bill or note, or goods or chattels, shall be intrusted or delivered by his master or mistress, shall withdraw himself or herself from his or her master or mistress and go away with the said money, bank bill or note, or goods or chattels or any part thereof, with the intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, shall embezzle the said money, bank bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use with like purpose to steal the same, every such person so offending shall be deemed guilty of larceny and be punished accordingly.

Larceny as bailee.

663. SEC. 68. If any bailee by finding or otherwise of any money, bank-bill or note, or goods or chattels, shall convert the same to his or her own use with intent to steal

the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof shall be punished accordingly.

Stealing of bedding, etc., by lodger deemed and punished as larceny.

664. SEC. 69. If any lodger shall take away, with intent to steal, embezzle or purloin any bedding, furniture, goods or chattels, which he or she is to use in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction shall be punished accordingly.

Punishment for displacing signal or switch, or obstructing track of railroad; resulting in death deemed murder.

665. SEC. 70. If any person shall wilfully and maliciously displace or remove any switch, signal or rail of any railroad, or shall break down, rip up, injure or destroy any railroad track or railroad bridge, or any portion thereof, or shall place any obstruction whatever upon any such railroad track or bridge or switch, or shall place any false signal upon or in the vicinity of any railroad track with intent that any person or property being or passing upon or over such railroad track or bridge should be injured, delayed or hindered, every such person so offending shall be punished by imprisonment in the penitentiary not less than one year and not exceeding five years. And if in consequence of any such act done, with the intent aforesaid, any person or property shall in fact be injured, every such person so offending shall be punished by imprisonment in the penitentiary not less than three years and not exceeding ten years; or if by reason of any such act done as aforesaid, with the intent aforesaid, any person is killed, or the life of any person is lost, every such person so offending shall be deemed guilty of murder.

Punishment for malicious killing or injury of stock, etc.

666. SEC. 71. If any person shall wilfully and maliciously kill, cripple or injure any horse, mare or gelding, or any bull, cow, steer, heifer or calf, or any mule or sheep by poisoning or other means; or shall maliciously run down or drive from its usual range any animal above mentioned; or shall maliciously scatter or drive from their usual range any flock or herd of sheep, or any herd or band of neat cattle, horses or mules, or any of the animals above mentioned; or shall maliciously destroy or injure any camp, shanty, cabin or house, occupied by any herder or shepherd or his assistants; or maliciously injure any horse or other animals in the possession of such herder or shep-

herd; or maliciously interfere with any such herder, shepherd or his assistants, with intent and for the purpose of hindering or preventing such herder, shepherd or his assistants from herding or keeping any flock of sheep or herd of cattle or other animals in the vicinity where such acts or any of them may be committed, or in or on any range or portion of this state not occupied by actual settlers; or with intent to break up, hinder, prevent, disturb or molest the business of herding or keeping any such flock or kind of flock or herd or kind of herd, or raising, producing or propagating the same in any portion of this state; every such person so offending shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine of not less than double nor more than four times the amount of injury done the property injured, or by imprisonment in the penitentiary not less than one year, nor more than ten years, or both, as the judge sitting at the trial may determine; and the said judge shall fix the amount of fine and the duration of such imprisonment in all cases.

Injured party to have damages.

667. SEC. 72. Every person guilty of an offense above herein mentioned, shall, in all cases, be liable to any party injured thereby, in three times the amount of the actual injury done by the commission of such offense, whether the offender be convicted on any criminal prosecution or not; and the person or persons instituting such proceeding shall have the right to proceed by attachment.

DIVISION VII. FORGERY AND COUNTERFEITING.

Forgery; punishment for.

668. SEC. 73. Every person who shall falsely make, alter, forge or counterfeit any record or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, United States treasury note, or United States bond, bank bill or note, post note, check or draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order or any accountable receipt, or any order or warrant or request for the payment of money or the delivery of

goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release or receipt for money or goods, or any acquittance release or discharge for any debt, account, action, suit, demand, or other thing real or personal, or any transfer or assurance of money, stock, goods, chattels or other property whatever; or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements or other estate real or personal; or any acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note for money or other property; or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this state or not; or shall utter, publish, pass, or attempt to pass as true and genuine, or cause to be uttered, published, passed, or attempted to be passed, as true and genuine, any of the above named false, altered, forged or counterfeited matters as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate reside in this state or not; every person so offending shall be deemed guilty of forgery, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Punishment for counterfeiting.

669. SEC. 74. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this state, or shall pass, or give in payment, or offer to pass or give in payment such counterfeited coin, or permit, cause or procure the same to be uttered or passed, with intent to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and being thereof duly convicted shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Having counterfeit coin in possession with intent to utter or pass the same; punishment for.

670. SEC. 75. Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current or hereafter to be current in this state, with intent to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Punishment for having in possession forged note, bond, bill, etc., or blank thereof, with intent to fill up and utter the same.

671. SEC. 76. Every person who shall have in his or her possession, or shall receive from any other person, any forged promissory note or notes, treasury notes, bond or bank bill or bills, for the payment of money, with intent to utter or pass the same, or permit, cause or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body corporate or politic, reside in or belong to this state or not, knowing the same to be forged or counterfeited, or shall have or keep in his or her possession any blank or unfinished note, treasury note, bond or bank bill, made in the form or similitude of any promissory note, treasury note, draft, bond, receipt or bill for the payment of money, made to be issued by any incorporated bank or banking company in this state or elsewhere, or by the government of the United States, with intent to fill up and complete such blank and unfinished note, treasury note, bond, draft, receipt or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed to defraud any person or persons, body politic or corporate, whether in this state or elsewhere, shall, upon conviction thereof, be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Having in possession counterfeit gold coin or uncoined gold with fraudulent intent; punishment for.

672. SEC. 77. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin, or any counterfeit uncoined gold in bars or otherwise, or any counterfeit gold dust, now current, or that shall hereafter be current in this state by law

or usage, with intent to utter or pass the same, or permit, cause or procure the same to be uttered or passed, with intent to defraud any person, body politic or corporate, knowing the same to be counterfeit, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for a term not less than one year and not more than fourteen years.

Punishment for mingling base metal or counterfeit gold dust with gold dust, with fraudulent intent.

673. SEC. 78. Every person who shall mingle, or procure to be mingled, with any uncoined gold or gold dust now current, or which shall hereafter be current in this state, any counterfeit gold dust, or counterfeit uncoined gold, or any base metal or substance whatever, with intent to utter or pass the same, or to procure the same to be uttered or passed as gold dust or uncoined gold, shall, on conviction thereof, be punished by a fine not to exceed one thousand dollars, or by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Clipping coin; punishment for.

674. SEC. 79. Every person who, with intent to defraud, shall impair falsely, clip, scale, lighten or diminish any gold or silver coin now current, or that shall hereafter be current by law or usage in this state, shall be deemed guilty of forgery, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than fourteen years.

Punishment for passing fictitious check or bill of bank not in existence.

675. SEC. 80. Every person who shall make, pass, utter or publish, with intent to defraud any person or persons, body politic or corporate, either in this state or elsewhere, or with like intent shall attempt to pass, utter or publish, or shall have in his or her possession with like, intent to pass, utter or publish any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument of writing, for the payment of money or property of some bank, corporation, copartnership or individual, when in fact there shall be no such bank, corporation copartnership or individual in existence, the said person knowing the bill, note, check or instrument of writing for the payment of money or property, to be fictitious, shall be deemed guilty of the crime of forgery, and on conviction thereof shall be punished by confinement in the peni-

tentiary for a term not less than one year nor more than fourteen years.

Making or having in possession dies, plates, etc., used in counterfeiting.

676. SEC. 81. Every person who shall make or knowingly have in his possession any die or dies, plate or plates, or any apparatus, paper, metal, machine or other thing whatever made use of in counterfeiting the coin now current, or hereafter to be current in this state, or in counterfeiting bank-notes, treasury-notes, bonds or bills, whether such bank be situate in this state or not, upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machines intended for the purposes aforesaid shall be destroyed.

On trial for forgery of bank note, incorporation of bank may be proven by general reputation.

677. SEC. 82. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass any such forged bill or note, it shall not be necessary to prove the incorporation of any such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

Experts competent witnesses.

678. SEC. 83. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Fraudulent forging, defacing counterfeiting, etc., or affixing of seals.

679. SEC. 84. Every person who shall fraudulently forge, deface, corrupt or counterfeit the seal of this state, or the seal of any court or public officer, by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully and corruptly or with evil intent affix any of the said true seals to any commission, deed, warrant, pardon, certificate or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

DIVISION VIII. CRIMES AND OFFENSES AGAINST PUBLIC JUSTICE.

Perjury and subornation of perjury.

680. SEC. 85. Every person having taken a lawful oath or made affirmation in any judicial proceeding, or in any other matter where by law an oath or affirmation is required, who shall swear or affirm wilfully, corruptly and falsely in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury, as the case may be, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Procuring conviction and execution of innocent person by perjury, etc.

681. SEC. 86. Every person who by wilful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof shall suffer the punishment of death.

Indictments for perjury; sufficient to set forth substance of offense.

682. SEC. 87. In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and before what court or authority the oath of affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of the record or proceedings either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed, or the form of the oath or affirmation or the manner of administering the same.

Bribery; punishment for.

683. SEC. 88. If any person or persons shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present, reward, or any other thing to obtain or procure the opinion, judgment or decree of any judge or justice of the peace acting within this state, or to corrupt, induce or influence such judge or justice of the peace, to be more favorable to one side than to the other in any suit, matter or cause depending or to be brought before him or them, or shall, directly or indirectly, give any sum

or sums of money, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward, or other thing, to obtain, procure or influence the vote of any member of the legislative assembly, or to incline, induce or influence any such member of the legislative assembly to be more favorable to one side than to the other, on any question, election, matter or thing pending or to be brought before the legislative assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly, who shall in any wise accept or receive the same, shall be deemed guilty of bribery, and on conviction shall be punished by confinement in the penitentiary for a term not less than one year nor more than five years.

Bribery of judge justice of the peace, etc., or other ministerial or judicial officer.

684. SEC. 89. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general or prosecuting attorney, member of the legislative assembly, or other officer, ministerial or judicial, (except such fees as are allowed by law,) with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested, or performed any duty of him required with partiality or favor or otherwise contrary to law, the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security, with intent, or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and on conviction shall be punished by confinement in the penitentiary for a term not less than one year nor more than five years.

685. SEC. 90. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, county or prosecuting attorney, or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections, and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, county or prosecuting attorney, or other ministerial or judicial officer who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall on conviction be fined in a sum not exceeding one thousand dollars.

Attempting to bribe, or offering to accept a bribe, etc.

686. SEC. 91. If any judge, justice of the peace, sheriff, coroner, clerk, recorder or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, bond or contract, or shall knowingly and wilfully take off, discharge or conceal any issue, forfeited recognizance or other forfeiture, or shall forge, deface or falsify any document or instrument recorded, or any registry, acknowledgment or certificate, or shall alter, deface or falsify any minute, document, book or any proceeding whatever of or belonging to any public office within this state, the person so offending and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than seven years.

Stealing or falsifying public records, etc.

687. SEC. 92. Every jailer who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office.

Punishment for inhumanity, etc. to prisoner by jailer.

688. SEC. 93. If any officer whose office shall be abolished by law, or who after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from his office, shall wilfully and unlawfully withhold or detain from his successor or other person entitled thereto by law, the records, papers, documents or other writing appertaining or belonging to his office, or mutilate, destroy or take away the

Wilful detention, mutilation or destruction of official records, etc., by officer.

same, the person so offending shall on conviction be punished by fine not exceeding one thousand dollars. The provisions of this section shall apply to any person or persons who shall have records, documents, papers or other writings in his, her or their possession, and who shall wilfully mutilate, destroy, withhold or detain the same as aforesaid.

False personation of another.

689. SEC. 94. If any person shall without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof shall be punished by confinement in the penitentiary for any term not less than one year or more than ten years.

Resisting officer in execution of process; unnecessary severity of officer.

690. SEC. 95. If any person shall knowingly and wilfully obstruct, resist or oppose any sheriff, deputy sheriff, coroner, constable or other officer of this state, or other person duly authorized in serving or attempting to serve any lawful process or order of any court, judge or justice of the peace or any other legal process whatsoever, or shall assault or beat any sheriff, deputy sheriff, coroner, constable or other officer or person duly authorized in serving or executing, or attempting to serve or execute any process or order as aforesaid, or for having served or executed or attempted to serve or execute the same, every person so offending shall be fined in a sum not exceeding five hundred dollars, and be imprisoned for a term not exceeding one year: *Provided,* Any officer or person whatever, that may or shall assault or beat any individual under color of his commission or authority, without lawful necessity so to do, shall, on conviction suffer the same punisment.

Resisting execution of law, by force of arms, or armed invasion of state.

691. SEC. 96. If any person or persons shall, in anywise aid, assist, engage in, co-operate or participate with any armed force of men, with intent by force of arms to obstruct, retard or resist the execution of any law of this state, or shall with such armed force invade any portion of this state, any such person or persons so offending shall on conviction, be fined in any sum not exceeding one thou-

sand dollars, or imprisoned for a term not exceeding ten years.

Obstruction of executive messenger or United States or other officer in the discharge of official duty, or refusing to aid officer in making arrest.

692. SEC. 97. If any person or persons shall wilfully and knowingly intercept, obstruct or oppose any messenger travelling in any part of this state, and carrying orders or dispatches from the executive department of this state, or shall in any manner oppose, resist or in any manner obstruct any officers of the United States or of this state, or any person or persons acting under the authority or by the direction of such officers while engaged in the discharge of any official duty, or shall when called upon by any such officer, refuse or neglect to aid or assist such officer in arresting any person or persons, any such person or persons so offending shall, on conviction, be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, or by both such fine and imprisonment.

Rescuing person convicted of crime.

693. SEC. 98. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person on conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in the custody of an officer or in the penitentiary, the person so offending on conviction thereof shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

Rescuing person charged with crime, before conviction.

694. SEC. 99. If any person shall set at liberty or rescue any person who before conviction stands charged or committed for any capital offense, or any crime punishable by confinement in the penitentiary, such person so offending, shall be on conviction fined in a sum not exceeding one thousand dollars and imprisoned in the penitentiary for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed or convicted of any misdemeanor or other offense punishable

by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty if he or she had been found guilty

Warden of penitentiary or other officer coniving at escape of prisoner.

695. SEC. 100. If the warden of the penitentiary or any servant, officer or agent belonging to, or in employment at the same, or any sheriff, deputy sheriff, or jailer or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, or in said penitentiary committed, every such person on conviction shall be punished by confinement in said penitentiary for a term not less than one year nor more than ten years.

Warden of penitentiary suffering prisoner to be at large contrary to law.

696. SEC. 101. If the warden of the penitentiary or other person as aforesaid, shall negligently suffer any convict committed or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to such convict, or to be there visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations thereof, to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by a fine not exceeding two hundred dollars.

Conveying weapon or tool to convict.

697. SEC. 102. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof shall be punished by a fine not exceeding five hundred dollars, and imprisonment in the penitentiary not exceeding six months.

Rescue of person in custody of civil process.

698. SEC. 103. If any person or persons shall rescue another in legal custody on civil process, such person or persons shall on conviction, be fined in any sum not exceeding the sum for which said civil process issued.

699. SEC. 104. If any person shall aid or assist a prisoner lawfully committed or detained in any jail for any offense against this state, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from the jail, though no escape be actually made, or if any person shall convey or cause to be delivered to any such prisoner any disguise, instrument or arms proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made) shall, on conviction, be punished by a fine not exceeding five hundred dollars and imprisoned in the county jail for a term not exceeding one year.

Aiding or assisting prisoner confined in jail to escape.

700. SEC. 105. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue or shall attempt to rescue any prisoner from the custody of any sheriff, deputy sheriff, coroner, constable, officer or other person who shall have the lawful custody of such prisoner, every person so offending shall, on conviction thereof, be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year.

Rescuing prisoner from custody of officer.

701. SEC. 106. If any sheriff, coroner, jailer, keeper of a prison, constable or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, and be imprisoned in the county jail for any term not exceeding six months; *provided*, that if such prisoner be in custody, charged with murder or other capital offense, then such officer or person suffering or permitting such escape shall be punished by confinement in the penitentiary for any term not less than one year nor more than ten years. A negligent escape of a person charged with a criminal offense, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by a fine not exceeding five hundred dollars.

Officer voluntarily or negligently suffering prisoner to escape.

702. SEC. 107. If any sheriff, coroner, keeper of a jail, constable or other officer, shall willfully refuse to receive or arrest any person charged with a criminal offense, then

Officer refusing to arrest or receive person charged with criminal offense.

such sheriff, coroner, jailer, constable or other officer, shall on conviction be fined not exceeding five hundred dollars, and imprisoned not exceeding six months in the county jail.

Compounding criminal offense.

703. SEC. 108. If any person shall take money, goods, chattels, lands or other reward or promise thereof to compound any criminal offense, such person or persons shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon or receiving compensation for the private injury occasioned by the commission of any such criminal offense.

Conspiring to procure person to be charged or indicted for criminal offense.

704. SEC. 109. If any two or more persons shall conspire or agree falsely and maliciously to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offense, or shall agree, conspire or co-operate to do, or to aid in doing any other unlawful act, each of the persons so offending shall on conviction be fined in any sum, not exceeding one thousand dollars, and imprisoned not less than three months nor exceeding two years.

Assuming office without authority.

705. SEC. 110. If any person shall take upon himself to exercise or officiate in any office or place of authority, in this state, without being lawfully authorized thereto, he shall upon conviction be fined in a sum not exceeding two hundred dollars.

Embracery

706. SEC. 111. Embracery is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, entertainments and the like. Every embracer who shall procure any juror to take money, gain or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding one year. And any juror convicted of taking money, gain or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as the petit jurors.

707. SEC. 112. If any person or persons shall wick-

edly and wilfully excite and stir up any suits or quarrel between the people of this state, either at law or otherwise, with a view to promote a strife and contention, every such person so offending shall be deemed to have committed the crime of common barratry, and upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars, and if he be an attorney or counselor at law, he shall be suspended from the practice for any time not exceeding six months. Common barratry.

708. SEC. 113. If any person shall officiously intermeddle in any suit at common law or in chancery, that in nowise belongs to or concerns such person, by maintaining or assisting either party with money or otherwise, to prosecute or defend such suit, with a view to promote litigation, every such person so offending shall be deemed to have committed the crime of maintenance, and upon conviction thereof shall be fined and punished as in cases of common barratry; *provided*, that it shall not be deemed maintenance for a man to maintain the suit of his kinsman or servant, or poor neighbor, out of charity. Maintenance.

709. SEC. 114. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer of this state, ministerial or judicial, shall wilfully or corruptly receive or take any fee or reward to execute or do his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall wilfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and on conviction thereof shall be fined in any sum not exceeding two hundred dollars. Extortion.

710. SEC. 115. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor or attorney general or prosecuting attorney, who shall be guilty of any palpable omission of duty, or who shall wilfully and corruptly be guilty of oppression, malfeasance or partiality in the discharge of his official duties, shall upon conviction thereof be fined in a sum not exceeding two hundred dollars. And the court Malfeasance or corruption in office.

shall have power upon the recommendation of the jury to add to the judgment of the court, that any officer so convicted shall be removed from office. The court shall have power, whenever any clerk of the district court, attorney general or prosecuting attorney shall be presented or indicted, to appoint for that occasion a prosecuting attorney, attorney general or clerk, as the case may require, who shall thereby be invested in relation to such presentment or indictment, with all the powers of clerk or attorney general or prosecuting attorney. It shall be the duty of the court when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

Whenever clerk of court or attorney shall be presented or indicted, the court may appoint clerk or attorney for that occasion.

711. SEC. 116. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels or other valuable things, or threatening to maim, wound, kill or murder, or to burn his or her house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his or her infirmities or failings, though no money, goods, chattels or valuable thing be demanded, such person so offending, shall, on conviction, be fined in a sum not exceeding five hundred dollars and imprisoned not exceeding six months.

Sending threatening letter.

DIVISION IX. OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

712. SEC. 117. If any person shall maliciously or wilfully disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous and offensive carriage, threatening, traducing, quarrelling, challenging to fight, or fighting, every person convicted thereof shall be fined in a sum not exceeding fifty dollars, or imprisoned in the county jail not exceeding two months.

Disturbing peace.

713. SEC. 118. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice of the peace,

Assembly for disturbing peace or for unlawful purpose, refusing to disperse at command of officer.

sheriff, coroner, constable or other public officer, such persons so offending, shall, on conviction, be severally fined in any sum not exceeding fifty dollars, and imprisoned in the county jail not exceeding one month.

Affrays.

714. SEC. 119. If two or more persons shall by agreement fight in any public place, to the terror of the citizens of this state, the persons so offending shall be deemed guilty of an affray.

Unlawful assemblage.

715. SEC. 120. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, be severally fined in a sum not exceeding fifty dollars, or imprisoned in the county jail not exceeding three months.

Rout.

716. SEC. 121. If two or more persons shall meet to do an unlawful act upon a common cause of quarrel, and make advances towards it, they shall be guilty of a rout, and on conviction, shall be severally fined in a sum not exceeding seventy dollars, or imprisoned in the county jail not exceeding four months.

Riot.

717. SEC. 122. If two or more persons actually do an unlawful act, with force or violence, against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent or tumultuous manner, the persons so offending shall be deemed guilty of a riot and on conviction shall severally be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding six months.

Officer knowing intention of persons to fight with deadly weapons, and not using authority to prevent.

718. SEC. 123. If any judge, justice of the peace, sheriff or other officer, bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined not exceeding five hundred dollars.

Publishing person as a coward; publisher required to testify.

719. SEC. 124. If any person or persons, shall in any newspaper or handbill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious or abusive language for not

accepting a challenge to fight a duel, such person or persons so offending, on conviction shall be fined in a sum not exceeding five hundred dollars, or imprisoned for a term not exceeding three months. The publisher or printer of any such newspaper, handbill or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill or publication, and if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment, or either: *Provided, however*, that the testimony given by any such witness shall in no case be used in any prosecution against such witness.

Libel; what may be given in justification.

720. SEC. 125. A libel is a malicious defamation expressed either by printing, or by signs, or pictures or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt or ridicule. Every person whether writer or publisher, convicted of this offense, shall be fined in a sum not exceeding five hundred dollars, or imprisoned in the penitentiary not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

DIVISION X. OFFENSES AGAINST THE PUBLIC MORALITY, HEALTH AND POLICE.

Bigamy; how marriage may be proven.

721. SEC. 126. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this state, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending, shall on conviction thereof, be punished by a fine not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding two years. It shall not be necessary to prove either of the said mar-

riages by the register or certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible, to prove a marriage in other cases; and when such second marriage shall have taken place without this state, cohabitation in this state, after such second marriage, shall be deemed a commission of the crime of bigamy, and the trial in such cases may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is or shall be at the time of such second marage divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

Unmarried man or woman marrying husband or wife of another.

722. SEC. 127. If any man or woman being unmarried shall knowingly marry the husband or wife of another, such man or woman shall on conviction be fined not more than five hundred dollars, or imprisoned in the penitentiary not more than one year.

Cohabitation in open adultery; prosecution may be suspended by marriage.

723. SEC. 128. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, and on conviction shall be fined in any sum not exceeding two hundred dollars each, or imprisoned in the county jail not exceeding six months. This offense shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offense, such man or woman shall be severally punished twice as much as the former punishment, and for a third offense, treble, and thus increasing the punishment for each succeeding offense: *Provided, however*, that it shall be in the power of the party or parties offending to prevent or suspend the prosecution by their intermarriage, if such marriage can be legally solemnized, upon the payment of the costs of such prosecution.

724. SEC. 129. Marriage between parents and child-

Incestuous marriages.

ren, including grand-parents and grand-children of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, and cousins in the first degree, are declared to be incestuous and absolutely void. This section shall extend as well to illegitimate as legitimate children and relations.

Punishment for incest.

725. SEC. 130. Persons within the degrees of consanguinity, within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and upon conviction, be punished by a fine of not less than fifty nor more than five hundred dollars, or imprisonment for not less than three months nor more than two years, or both, at the discretion of the court.

Licentious cohabitation of father with daughter.

726. SEC. 131. If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years.

Open lewdness; keeping open tippling or gambling house on Sabbath, house of ill-fame or disorderly house

727. SEC. 132. If any person shall be guilty of open lewdness or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling or gaming-house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common, ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication or other misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding six months.

Obscene publications.

728. SEC. 133. If any person shall hereafter bring or cause to be brought or imported into this state, for sale or shall sell or offer to sell any obscene book, pamphlet or print, every such person shall, on conviction, be fined in a sum not less than twenty-five dollars, nor more than two hundred dollars.

Gambling houses

729. SEC. 134. If any person shall keep any room, building, arbor, booth, shed or tenement of any descrip-

tion, to be used or occupied for gambling, or shall knowingly permit the same to be used or occupied for gambling; or if any person being the owner of any room, building, arbor, booth, shed or tenement of any description, shall rent the same to be used or occupied for gambling, the person so offending shall, on conviction thereof, be fined in any sum not less than thirty dollars nor more than five hundred dollars, or be imprisoned in the county jail, not less than ten days nor more than thirty days, or both, at the discretion of the court; and if the owner of any room, building, arbor, booth, shed or tenement of any description shall know that any gaming tables, apparatus or establishment is kept or used in such room, building, arbor, booth, shed or tenement for gambling and winning, betting or gaining money or other property, and shall not forthwith cause complaint to be made against the person so keeping or using such room, building, arbor, booth, shed or tenement, he shall be taken, held and considered to have knowingly permitted the same to be used and occupied for gambling. Every day for which any person or persons shall keep any house, room, building, tent or tenement of any description, to be used or occupied for gambling, and shall knowingly allow any such place to be used or occupied for gambling, shall be deemed and held to be a separate and distinct offense.

Who deemed common gamblers.

730. SEC. 135. If any person shall keep or exhibit any gaming table, establishment, device or apparatus to win or gain money or other property, or shall aid, assist or permit others to do the same, or if any person shall engage in gambling for a livelihood, or shall be without any fixed residence, and in the habit and practice of gambling, he shall be deemed and taken to be a common gambler, and upon conviction thereof, shall be imprisoned in the county jail not less than three months, nor more than one year, and be fined in any sum not less than two hundred dollars, nor more than five hundred dollars.

Penalty for playing at any game for money.

731. SEC. 136. If any person shall play at any game whatsoever, for any sum of money or other property of value, or shall make any bet or wager for any sum of money or other property of value, upon the result of such

game, every such person shall, on conviction thereof, be fined in any sum not less than fifty dollars, nor more than one hundred and fifty dollars.

Procuring minor to gamble; penalty for.

732. SEC. 137. If any person shall, by any device or pretense, entice or tempt and prevail upon, or cause any minor to engage with such person, or with any other person or persons, in any game whatsoever, for any sum of money or property of value, or shall make any bet or wager with such minor, or cause the same to be done upon the result of any game, every such person shall, on conviction thereof, be deemed guilty of a misdemeanor, and fined in any sum not less than fifty dollars, nor more than one hundred and fifty dollars.

Violations of four preceding sections deemed misdemeanor; disposition of penalties.

733. SEC. 138. Every person violating any of the provisions of the last preceding four sections, shall be deemed guilty of a misdemeanor, and shall be liable to indictment therefor; or the district attorney of any county may, if he shall elect so to do, present to the district court his information against any such offender or offenders, which information shall be in the name of the people of the state of Colorado, and shall be signed by such district attorney and need not be otherwise authenticated. When any information shall be presented against any person as aforesaid, the trial shall proceed in the same manner and with like effect as if such person had been indicted by a grand jury. All fines collected upon any such indictment or information, shall be paid the one half thereof to the person giving information of the offense, and the remainder shall be paid into the school fund of the county in which the offense was committed, and the person receiving the one-half of such fine as informer shall be deemed and held to be a competent witness upon the trial of such offender.

Duties of officers in suppression of gambling.

734. SEC. 139. It shall be the duty of all sheriffs, coroners, constables, police officers of cities, and other officers charged with executing the laws of this state, whenever it shall come to the knowledge of any such officer that any person has in his possession any cards, tables, checks, balls, wheels or gambling devices of any nature or kind, used or kept for the purpose of gambling or playing at any game of chance; or that any cards, tables, checks,

balls, wheels or gambling devices used or kept for the purposes aforesaid may be found in any place, to seize and take such cards, tables, checks, balls, wheels or gambling devices, and convey the same before some judge or justice of the peace of the county in which the same may be found; and it shall be the duty of such judge or justice of the peace to inquire of such witnesses as he shall summon to appear before him in that behalf, touching the nature of such gambling devices, and if such judge or justice shall ascertain that the same are used or kept for the purpose of gambling or playing at any game or games of chance, it shall be his duty to destroy the same. It shall be lawful for officers in executing the duties imposed upon them by this section, to break open doors for the purpose of obtaining possession of any such gambling devices; and all persons having possession of any of the articles aforesaid, shall be conveyed before some judge or justice of the peace of the county in which they may be found, and held or committed for appearance at the next term of the district court, to answer to any indictment or information which may be preferred against them or any of them.

Gaming contracts void; assignment not to affect defense.

735. SEC. 140. All contracts, promises, agreements, conveyances, securities and notes made, given, granted, executed, drawn or entered into, where the whole or any part of the consideration thereof shall be for any money, property or other valuable thing won by any gaming, or by playing at cards, or any gambling device or game of chance, or by betting on the side or hands of any person gaming, or for the reimbursing or paying any money or property knowingly lent or advanced at the time and place of such play, to any person or persons so gaming or betting, shall be utterly void and of no effect. No assignment of any bill, bond, note or other evidence of indebtedness, where the whole or any part of the consideration for such assignment shall arise out of any gaming transaction, shall in any manner offset the defense of the person or persons making, entering into, executing or giving such instrument so assigned, or the remedies of any person interested therein.

736. SEC. 141. Every tavern keeper who shall suffer

Tavern keeper permitting gambling; penalty for.

or permit any game or games prohibited, or intended to be prohibited by this chapter, to be played in his tavern, or any out-house appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed as a tavern keeper for one year from such conviction.

Selling liquors without license.

737. SEC. 142. Every person who not having a legal license to keep a grocery, shall barter, sell or exchange any wine, rum, brandy, gin, whisky or other spirituous, vinous or mixed liquors to any person or persons, by a less quantity than one quart, shall, on conviction, be fined for every offense twenty dollars.

Selling liquor to common drunkard or Indians.

738. SEC. 143. Every tavern keeper, or other retailer of spirituous liquors, who shall barter, sell or exchange any wine, rum, gin, brandy, whisky or other spiritous liquors to any common drunkard, and every person, whether tavern keeper or not, who shall sell, barter or exchange any wine, rum, gin, brandy, whisky or other spirituous or mixed liquors, to any Indian or Indians in this state, shall, on conviction, be fined in the sum of fifty dollars for each offense.

Selling liquor to soldiers.

739. SEC. 144. If any person, by himself or his agent, shall knowingly sell, exchange, give, barter or dispose of any spirituous liquors or wine, to any of the troops of the United States, or militia of this state, being or serving within the limits of this state, except such supplies as may be ordered by the officers of the United States army, under the direction of the war department, such person, on conviction thereof, shall be imprisoned for a period not exceeding three months, or shall be fined in any sum not exceeding fifty dollars; and such person shall, upon such conviction, also forfeit any license he may have obtained authorizing him to retail spirituous or other liquors.

Obstructing public road; erecting offensive manufactory polluting or obstructing water course, etc.

740. SEC. 145. If any person shall obstruct or injure or cause or procure to be obstructed or injured, any public road or highway or common street or alley of any town or village, or any public bridge or causeway, or public river or stream, declared navigable by law, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any

offensive trade or manufacture or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any watercourse, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village or neighborhood thereabouts; every person so offending, shall, upon conviction thereof, be fined not exceeding three hundred dollars; and every such nuisance may, by order of the district court before whom the conviction may take place, be removed and abated by the sheriff of the proper county, and any inquest and judgment thereon had under the provisions of any law authorizing a writ of *ad quod damnum* shall be no bar to a prosecution under this section.

Selling flesh of diseased animal, or adulterated liquors.

741. SEC. 146. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors, every person so offending shall be fined not exceeding two hundred dollars.

State and county officers not to deal in state and county scrip.

742. SEC. 147. It shall not be lawful for any person acting as state treasurer, state auditor, or any other state officer holding office in this state, or any county treasurer, clerk, collector or any other county officer holding office in this state, either directly or indirectly, to buy or barter or trade for, sell or traffic in, any state or county scrip, county order, auditor's warrant or certificate of indebtedness or other evidence of indebtedness of the state or any county therein, and such officer violating the provisions of this section shall be liable to indictment, and upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding three months, or shall suffer both such fine and imprisonment on the discretion of the court. It shall be no defense to any indictment hereunder, that such warrant, order, scrip, certificate or other evidence hath not been countersigned and registered or either of them prior to such offense; but this section shall not be construed to forbid the sale by any officer of any such warrant, order or scrip issued to him for his personal services or otherwise.

State or county treasurer refusing to pay warrant, there being money in the treasury for that purpose, or to receive warrant in payment of taxes.

743. SEC. 148. Any state or county treasurer, who upon presentation of any auditor's warrant, state warrant, county order or the like evidence of indebtedness, for payment, shall refuse payment thereof, there being then in such treasury sufficient funds appropriated by law for the payment of such warrant, order or other like indebtedness, or wherefrom by law, payment thereof ought to be made; and any county treasurer or collector of taxes, who upon presentation of any auditor's warrant, county order or other like certificate or evidence of indebtedness in payment of any taxes which may by law be paid therein, shall refuse to receive such order, warrant or certificate in payment of such taxes, every such officer so offending shall be liable to indictment, and upon conviction, shall be fined in any sum not exceeding five hundred dollars. This section shall extend to the deputies of every such treasurer and collector of taxes.

Uttering bills to circulate as money without authority.

744. SEC. 149. If any person, number of persons or corporation in this state, without special leave from the legislative assembly, shall emit or utter any bill of credit, make, sign, draw or indorse any bond, promissory note, or writing, bill of exchange or order, to be used a general circulating medium, and in lieu of money or other currency, every such person or persons, or members of such corporation assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding five hundred dollars, or be imprisoned not exceeding one year.

Defacing, destroying, etc., any law, proclamation or advertisement.

745. SEC. 150. If any person shall intentionally deface, obliterate, tear down or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States or of this state, or any proclamation, advertisement or notification set up at any place in this state by authority of the United States or of this state, or by order of any court, such person on conviction shall be fined in a sum not exceeding one hundred dollars nor less than ten dollars, or imprisoned in the county jail for a term not exceeding one month: *Provided*, that this section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, advertisement or notification, after the time for which the same was by law to remain set up shall have expired.

746. SEC. 151. Any person able to work and support himself in some honest and respectable calling, not having wherewithal to maintain himself, who shall be found loitering, strolling about, frequenting of public places where liquor is sold, begging or leading an idle, immoral or profligate course of life, shall be liable to be indicted, or on the complaint under oath, of any resident citizen of the county, arrested and carried before any justice of the peace, who shall examine said accused person, and hear the testimony in relation thereto, and if he shall be satisfied that he is a vagrant as above set forth, the fact having been established by a jury, which shall in all cases be summoned and sworn to inquire the truth thereof, whether the person be a vagrant or not; such justice shall make out a warrant under his hand and seal authorizing and requiring the officer having him in charge or custody to hire out such vagrant, within twenty-four hours, to the best bidder, by public outcry, or on notice given, as such justice may direct, for the highest price that can be had, for any term not exceeding four months; and such vagrant shall be subject to and governed by all the provisions of the act regulating apprentices, during the time for which he has been so hired. The money received for his hire shall, after deducting the costs, be, if he be without family, paid into the county treasury, but if he have a family, the same shall be appropriated for their benefit and use: *provided*, that any such vagrant when arrested, and before judgment, may release himself by giving to said justice a bond with good security, conditioned that he will, for the next twelve months, be of good behavior and betake himself to some honest employment for support, and that he shall not, nor his family, become a county charge through or by reason of his idleness, immorality or profligacy. Vagrancy.

747. SEC. 152. If any person shall be found having upon him or her any pick-lock, crow, key, bit or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, warehouse, shop or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any goods and chattels, every such person so offending shall, on con- Person found with tools, with intent to commit burglary, etc.

viction, be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years.

Carrying concealed weapons.

748. SEC. 153. If any person or persons shall, within any city, town or village in this state, whether the same is incorporated or not, carry concealed upon his or her person any pistol, bowie-knife, dagger or other deadly weapon, such person shall, on conviction thereof before any justice of the peace of the proper county, be fined in any sum not less than five, nor more than thirty-five dollars. The provisions of this section shall not be construed to apply to sheriffs, constables and police officers, when in the execution of their official duties.

Carrying offensive weapon with intent to assault.

749. SEC. 154. If any person shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months.

Refusing or neglecting to join *posse comitatus*.

750. SEC. 155. Every male person above eighteen years of age who shall neglect or refuse to join the *posse comitatus*, or the power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may have been issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons who after having been arrested or confined may have escaped from such arrest or imprisonment, or neglecting or refusing to aid and assist in preventing any breach of the peace, or commission of any criminal offense, being thereto lawfully required by any sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than twenty dollars nor more than two hundred dollars.

Opening grave and removing body for dissection

751. SEC. 156. If any person or persons shall open the grave or tomb, where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies or remains of any deceased person or persons from the grave or place of sepulture for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and

consent of the near relations of the deceased, or shall in any way aid, assist, counsel or procure the same to be done, every such person or persons so offending shall, on conviction, be fined not less than one hundred dollars nor more than five hundred dollars: *Provided*, that this section shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority: *And provided, also*, that this section shall not be construed to prevent any person from removing the body or bodies of their deceased relations or intimate friends to any other place of sepulture that he or she may think proper.

Elector voting more than once at any election.

752. SEC. 157. If any person, being an elector, shall vote more than once at any election which may be held by virtue of any law of this state, he shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

Attempting to influence or coerce elector.

753. SEC. 158. If any person shall, by bribery, menace, treating or other corrupt means or device whatsoever, either directly or indirectly attempt to influence any elector of this state in giving his vote at any election, every person so offending and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this state for five years.

Disturbing the peace on Sunday

754. SEC. 159. Any person who shall hereafter knowingly disturb the peace and good order of society, by labor or amusement, on the first day of the week, commonly called Sunday (works of necessity and charity excepted), shall be fined, on conviction thereof, in any sum not exceeding fifty dollars.

Noise, rout or disturbing religious meeting on Sunday.

755. SEC. 160. Whoever shall be guilty of any noise, rout or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, or who shall, by a disorderly or immoral conduct, interrupt or disturb the meeting, processions or ceremonies of any religious denomination, on either a Sunday or week day, such person so offending shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding fifty dollars.

Selling liquors within one mile of religious congregation.

756. SEC. 161. Any person, who shall by menace, profane swearing, vulgar language, or any disorderly or immoral conduct, interrupt and disturb any congregation or collection of citizens assembled together for the purpose of worshipping Almighty God, or who shall sell or attempt to sell or otherwise dispose of ardent spirits or liquors, or any articles which may tend to disturb any worshipping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined in any sum not exceeding one hundred dollars: *Provided*, that this section shall not be so construed as to affect any person who may sell whisky or any other ardent spirits at his own distillery, store or dwelling house.

Jurisdiction of justices of the peace in offenses mentioned in last three sections.

757. SEC. 162. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offenses mentioned in the last three sections of this chapter, and may on view, or upon information on oath, cause every such person having offended as aforesaid, to be apprehended and brought before him to answer such charge.

Right of person charged with offenses specified in four preceeding sections, to trial by jury.

758. SEC. 163. Any person who shall be accused with either of the offenses specified in the four preceding sections, if he choose it, shall have the cause tried by a jury of six lawful jurors, and if he shall insist on a full jury, by twelve, who shall be summoned to try the cause; and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than in said sections specified, upon which the justice before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine and costs, and proceed to collect the same without delay; and when said fine shall be collected, the officer or person collecting the same shall be required to pay it over without delay to the treasurer of the proper county, taking his receipt therefor, which receipt shall be filed with the clerk of the county commis-

Disposition of fines.

sioners' court, after which the said fine or fines which may be thus deposited, shall be subject to the control of said court, and appropriated to the support of common schools in the county where such conviction is had.

759. SEC. 164. The judgments rendered under the five preceding sections, shall be subject to appeals, as in cases of assault and battery and affrays, and shall be collected in the same manner. Appeals allowed

760. SEC. 165. If any person shall hereafter throw or discharge into any stream of running water, or into any ditch or flume in this state, any obnoxious substance, such as refuse matter from a slaughter house or privy, or slops from eating houses or saloons, or any other fleshy or vegetable matter which is subject to decay in the water, such person or persons, shall, upon conviction thereof, be punished by a fine not less than one hundred dollars nor more than five hundred dollars for each and every offense so committed. Throwing or discharging obnoxious substances into streams, etc. (Amendment 1874.)

DIVISION XI. OFFENSES COMMITTED BY CHEATS, SWINDLERS AND OTHER FRAUDULENT PERSONS.

761. SEC. 166. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands, or who being parties as aforesaid at any time, shall wittingly and willingly put in use, avow, maintain, justify or defend the same, or any of them as true, and done, had or made in good faith, or upon good consideration, or shall sell, alien or assign any of the lands, tenements, hereditaments, goods, chattels or other things before mentioned to him, her or them, conveyed as aforesaid, or any part thereof, he, she or they so offending shall, on conviction, be fined not exceeding one thousand dollars. Party to fraudulent conveyances; how punished.

762. SEC. 167. If any person, by false representations in writing of his own responsibility, wealth or mercantile correspondence and connection, shall obtain a credit Obtaining money, goods, etc., by false pretenses.

thereby, defraud any person or persons of money, goods, chattels or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth or mercantile character, and by thus imposing on any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares, merchandise or any valuable thing, every such offender shall be deemed a swindler, and on conviction shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding six months.

Cheating; punishment for.

763. SEC. 168. If any person or persons shall knowingly and designedly, by any false pretense or pretenses, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever, with intent to cheat or defraud any such person or persons of the same; every person so offending shall be deemed a cheat, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding one year, and shall be sentenced to restore the property so fraudulently obtained, if it can be done; this section shall not apply to sales of property on a credit.

Keeping or using fraudulent scales or weights.

764. SEC. 169. If any person shall knowingly have, keep or use any false or fraudulent scales or weights for weighing gold or gold dust or any other article or commodity, every such person so offending shall, on conviction, be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months.

Owner of quartz mill, etc., refusing to pay over proceeds of quartz.

765. SEC. 170. The owner, manager or agent of any species of quartz mill, arastra mill, furnace or cupel, employed in extracting gold from quartz, pyrites or other minerals, who shall neglect or refuse to account for, or pay over and deliver all the proceeds thereof to the owner of such quartz, pyrites or other minerals, excepting such portion of said proceeds as he is entitled to in return for his services, shall, on conviction, be fined in a sum not exceeding one thousand dollars, or be imprisoned in the penitentiary not exceeding one year.

766. SEC. 171. Any person or persons, who, after once

selling, bartering or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands or town lot or lots, shall again knowingly and fraudulently sell, barter or dispose of the same tract or tracts of land or town lot or lots or any parts thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter or dispose of the same land or lot or lots or any part thereof to any other person or persons for a valuable consideration, every such offender upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

Person re-selling or agreeing to re-sell any lot or tract of land.

767. SEC. 172. If any person shall knowlngly sell, by false weights or measures, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye or other grain, he shall be deemed a common cheat, and on conviction, shall be fined not less than two hundred dollars, and be imprisoned in the county jail not exceeding three months.

Penalty for using false weights or measures at any mill.

768. SEC. 173. That no warehouseman, wharfinger or other person shall issue any receipt or other voucher, for any goods, wares, merchandise, grain or other produce or commodity, to any person or persons purporting to be the owner or owners thereof, unless such goods, wares, merchandise or other produce or commodity, shall have been *bona fide* received into store by such warehouseman or wharfinger or other person, and shall be in store and under his control at the time of issuing such receipt.

Warehouseman not to issue receipt, unless property is actually in his possession and control.

769. SEC. 174. That no warehouseman, wharfinger or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity, shall be, at the time of issuing such receipt, the property of such warehouseman or wharfinger or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher as aforesaid.

Warehouseman not to issue receipt as security for money loaned unless property is actually in his possession.

770. SEC. 175. That no warehouseman, wharfinger or other person shall issue any second receipt for any goods,

Warehouseman not to issue second receipt while former receipt is outstanding.

wares, merchandise, grain or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncancelled.

Warehouseman shall not remove beyond his control any property for which receipt has been given, without assent of person holding receipt.

771. SEC. 176. That no warehouseman, wharfinger or other person shall sell or encumber, ship, transfer or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt.

Penalty for warehouseman violating any of the foregoing provisions.

772. SEC. 177. Any warehouseman, wharfinger or other person who shall violate any of the foregoing provisions relating to warehousemen, shall be deemed a cheat, and be subject to indictment, and upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary of this state not exceeding five years; and all and every person aggrieved may have and maintain an action on the case against the person or persons violating any of the foregoing provisions relating to warehousemen, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under the foregoing sections or not.

Officer of corporation signing fraudulent, etc., certificate of stock, with intent to utter same.

773. SEC. 178. Every president, cashier, treasurer, secretary or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall wilfully and designedly sign, with intent to issue, sell, pledge or cause to be issued, sold or pledged, any false, fraudulent or simulated certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, for the signing, issuing, selling or pledging of which such president, cashier, treasurer, or other officer or agent, shall not be authorized by the charter and by laws of such corporation, or by some amendment thereof, shall be adjudged guilty of felony; and every such person or persons shall be liable to indictment, and on conviction

shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

774. SEC. 179. Every president, cashier, treasurer, secretary or other officer, and every agent, attorney, servant or employé of any bank, railroad, manufacturing or other corporation, and every other person who shall, knowingly and designedly, or with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, tranferred, assigned or pledged, any false, fraudulent or simulated certificate or other evidence of ownership, or of any share or shares of the capital stock of any bank, railroad, manufacturing or other corporation; every such person so issuing, selling, transferring, assigning or pledging, or causing the same to be done, shall be adjudged guilty of felony, and shall be liable to indictment, and on conviction shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

Issuing, selling, transferring, etc. fraudulent certificate of stock.

775. SEC. 180. If any person keeping a public ranch or stable, shall use or allow to be used, without the consent of the owner, any horse, ox, mule or ass, that shall be left with him to be ranched or fed, he shall forfeit to the owner, all ranch or stable fees that may be due upon such animal used, and the additional sum of five dollars for each day such animal may have been used; to be collected in the same manner as other debts.

Public ranchman using animal left with him, without consent of owner

776. SEC. 181. That every person who shall mingle or cause to be mingled with any sample of gold or silver-bearing ore, any valuable metal or substance whatever that will increase or in any way change the value of said ore, with the intent to deceive, cheat or defraud any person or persons, shall, on conviction thereof, be punished by a fine not less than five hundred nor more than one thousand dollars, or by confinement in the penitentiary for a term not less than one nor more than fourteen years, or by both such fine and imprisonment

Mingling valuable metal with samples of ores.

777. SECTION A. It shall be a misdemeanor, punish-

Divulging contents or purpose of telegraphic message. (Amendments 1877.)

able with a fine not exceeding one thousand dollars, or imprisonment not to exceed one year, or both, in any employé of a telegraph company or any other person, to wilfully divulge the contents or the purport of any message or part thereof, sent or to be intended to be sent over the telegraph line, and the offender shall be liable for damages in a civil action.

Sending or delivering false telegraphic message with intent to injure, etc.

778. SECTION B. It shall be a misdemeanor, punishable, (as in the last foregoing section) to knowingly and wilfully send or deliver a false message, or to furnish or conspire to furnish such mesage to an operator to be sent or deliver, with intent to injure, deceive or defraud any person, corporation or the public, and the offender shall be liable in a civil action.

Opening sealed message, or personating another for purpose of procuring delivery of message.

779. SECTION C. It shall be a misdemeanor, punishable as in section A, to wilfully or unlawfuly open any sealed envelope inclosing a message with the view of learning its contents, or to fraudulently personate another, and thereby procure the delivery to himself of the message directed to such person, with the intent to use, destroy or detain the same, and the offending party shall be liable in treble damages to the injured person for all damages sustained thereby.

Reading or attempting to read message while in transit, etc.

780. SECTION D. It shall be a misdemanor, punishable as in section A, to wilfully and fraudulently read or attempt to read by means of any instrument or in any other manner, any message on its transit, or to wilfully and fraudulently or clandestinely learn or attempt to learn the contents or meaning of a message while in a telegraph office, or while being received thereat or sent therefrom, or to use or attempt to use or communicate any information so obtained by any person, and the offender shall be liable to damages in a civil action.

Bribery of telegraphic operator or employé.

781. SECTION E. It shall be a misdemeanor, punishable as in section A, to bribe a telegraph operator or employé to disclose any private message or the purport of the same, or to offer a bribe to such operator or employé, for the disclosure of any private information received by him, by reason of his trust as agent of a telegraph company, or to use or attempt to use such information when obtained.

DIVISION XII. FRAUDULENT AND MALICIOUS MISCHIEF.

Malicious mischief.

782. SEC. 182. If any person shall wilfully and maliciously cut down, break down, level, demolish, or otherwise destroy or damage, any bridge, embankment, mill-dam or ditch, being the property of another, or break or destroy the windows or doors of any dwelling-house or other house, belonging to or occupied by another, or shall set fire to or burn or destroy, or procure or cause to be burnt or destroyed, any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley, or other grain of any kind, being the property of another, or shall cut down, girdle, or destroy any fruit or shade tree, standing or growing upon the premises of another, or cut, pull down; or destroy any gate, post, railing or fence, pull down, burn or destroy any pile or piles of wood, boards or planks, or other lumber, being the property of another, or shall, for malice or mischief, overturn any cart, wagon or other carriage, or run them into sloughs, holes or other places, or shall cut loose or set adrift any canoe, ferry, flat, skiff, boat or other vessel, for mischief, or shall unlawfully, wantonly, wilfully and maliciously kill, wound, disfigure or destroy any horse, mare, filly, colt or gelding, or any bull, ox, steer, bullock, cow, heifer or calf, or any sheep or lamb, or any hog, pig or dog, or any other useful animal, being the property of another; every person so offending, on conviction, shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding three months, or both.

Destroying, etc. any public jail.

783. SEC. 183. If any person shall wilfully and intentionally, break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail or other place of confinement, every person so offending, shall, upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of such jail or place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act.

Firing woods or prairies in inhabited parts of the state.

784. SEC. 184. If any person or persons shall, at any time hereafter, wilfully and intentionally, or negligently and carelessly set on fire or cause to be set on fire, any woods,

prairies, or other grounds whatever, in the inhabited parts of this state, every person so offending, shall, on conviction, be fined in any sum not less than twenty nor more than two hundred dollars: *Provided,* that this section shall not extend to any person who shall set on fire, or cause to be set on fire, any woods or prairies adjoining his or her own farm, plantation or enclosure for the necessary preservation thereof from accident by fire, between the first day of March and the last day of November, by giving to his or her neighbors, two days' notice of such intention: *And provided, also,* that this section shall not be construed to take away any civil remedy which any person may be entitled to for any injury which may be done or received in consequence of such firing.

DIVISION XIII. CONSTRUCTION OF THIS CHAPTER AND DUTY OF COURTS.

Form of indictment.

785. SEC. 185. Every indictment or accusation of the grand jury shall be deemed sufficiently technical and correct, which states the offense in the terms and language of this code, or so plainly that the nature of the offense may be easily understood by the jury. The commencement of the indictment shall be in substance as follows:

STATE OF COLORADO,
————COUNTY, } ss.

Of the——term of the———court, in the year of our Lord, 18—.

The grand jurors chosen, selected and sworn, in and for the county of ———, in the name and by the authority of the people of the state of Colorado, upon their oaths, present, etc. [Here insert the offense, and time and place of committing the same, with reasonable certainty.]

Exceptions to form of indictment to be made before trial; certain defects not grounds for quashing indictment.

786. SEC. 186. All exceptions which go merely to the form of an indictment, shall be made before trial, and no motion in arrest of judgment or writ of error shall be sustained for any matter not affecting the real merits of the offense charged in such indictment; no indictment shall be quashed for want of the words "with force and arms," or of the occupation or place of residence of the accused, nor

by reason of the disqualification of any grand juror or grand jurors.

Where venue to lie in case of offense committed in county attached to another for judicial purposes.

787. SEC. 187. Whenever any county is by law attached to another county for judicial purposes, and any offense or crime under the provisions of this chapter shall be committed in such county, the venue may be laid in either of said counties.

Construction of this chapter as to maintaining civil action for damages sustained in consequence of commission of criminal offense. (Amendment 1877.)

788. SEC. 188. Nothing in this chapter contained shall be so construed as to prevent the party or parties injured, from having and maintaining a civil action for all damages and losses that he, she or they may have sustained, in consequence of the commission of any criminal offense herein punished, or as to prevent the party or parties injured, of having the damages assessed by the court, or the jury in court, sitting on the trial of the criminal offense; and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any matter affected thereby; *Provided, however*, the record of conviction shall not be used as evidence in any civil action brought on any forged writing, or to recover the damages or losses sustained by the commission of any such criminal offense.

Punishment of death; how inflicted.

789. SEC. 189. The manner of inflicting the punishment of death, shall be by hanging the person convicted by the neck until death, at such time as the court shall direct, not less than fifteen nor more than twenty-five days from the time sentence is pronounced, unless for good cause the court or governor may prolong the time.

When body of convict may be delivered to surgeon for dissection.

790. SEC. 190. The court may order, on the application of any respectable surgeon or surgeons, that the body of the convict shall after death be delivered to such surgeon or surgeons for dissection; *provided*, the same shall not be claimed by anyone related to the person executed, by consanguinity or affinity, or any friend desiring to give the body christian burial.

This chapter to extend to females; infants how punished.

791. SEC. 191. This chapter shall extend to females committing any of the offenses herein enumerated and defined, although they may not be expressly named. Infants under the age of twelve years, shall, for all offenses the penalty whereof is imprisonment, be punished by confinement in the county jail for a period not exceeding two

years; and in all cases whatsoever, where the punishment for an offense herein enumerated is imprisonment, and such punishment is discretionary in amount, the court before which conviction of such offense is had, shall fix the term of such imprisonment.

Judges of supreme and district courts to report imperfections in code.

792. SEC. 192. It shall be and is hereby declared to be the duty of judges of the supreme and district courts, to make a special report to the legislature, at such session thereof, of all such defects, omissions or imperfections in this code as experience may suggest.

What counts may be joined in indictment.

793. SEC. 193. Counts in larceny, and for embezzlement, and for receiving stolen goods, may be joined in the same indictment.

How offenses not herein defined may be punished.

794. SEC. 194. All offenses herein defined shall be prosecuted and punished as herein prescribed, and not otherwise, and all other offenses may be punished by fine and imprisonment, in the discretion of the court; *provided*, that the fine in no case exceed one hundred dollars, and the imprisonment six months.

When the court to determine extent and amount of punishment.

795. SEC. 195. Whenever the punishment for any crime or misdemeanor is discretionary as to the amount or extent, the court may determine and affix the same, whether the punishment consists of corporeal punishment, imprisonment or fine.

Disposition of fines where no other provision is made.

796. SEC. 196. All fines imposed by virtue of any of the laws of this state, for the punishment of crimes and misdemeanors, where no other provision is made, shall, when collected, be paid into the treasury of the county where the offense shall be tried, for the use of such county, unless otherwise expressly directed; *provided*, that nothing in this section contained shall be so construed as to found or constitute a cause of challenge or objection to any grand or petit juror.

Benefit of clergy etc., abolished.

797. SEC. 197. The benefit of clergy, appeals of felony and trials by battle shall be and are hereby abolished.

Court may order offender committed until fine and costs are paid.

798. SEC. 198. The court shall have power, in all cases of conviction under this chapter, when any fine is inflicted, to order as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid, or otherwise legally discharged.

799. SEC. 199. Whenever any person shall be lawfully sentenced for crime by the judge of any district court in this state, to imprisonment in the state prison, or to any county jail, it shall be competent for the court awarding such sentence, to incorporate therein a provision that the person so sentenced shall be kept at hard labor during the term of such imprisonment, or for any specified portion thereof, as may be adjudged by the said court. Sentence of hard labor.

800. SEC. 200. It shall be the duty of the keepers of the said several prisons, whenever any person shall be sentenced to hard labor therein, and any mode of labor shall be provided, to cause such prisoner to be kept constantly employed during every day, Sundays excepted, and annually to account with the board of county commissioners for the proceeds of such labor; and in all cases it shall be lawful for the said jailer, with the consent of the county commissioners of the county in which such jail may be situated, to provide labor for such prisoners, if they deem it expedient and profitable so to do, either inside of the jail or outside of its limits. How proceeds of labor to be accounted for.

801. SEC. 201. The keepers of said prisons shall respectively have power, with the consent of the county commissioners of said counties, from time to time, to cause such of the convicts under their charge as are capable of hard labor, to be employed on any of the public avenues, streets, highways or other works, quarries or mines, in the county in which such prisoners shall be confined, or in any of the adjoining counties, upon such terms as may be agreed upon between the said keepers and the officers or other persons under whose directions such convicts shall be placed. How keepers may cause prisoners to be employed.

802. SEC. 202. Whenever any convict or convicts shall be employed under and by authority of the preceding section, he or they shall be in the legal care and custody of the person or persons to whom they shall be so employed; and he or they shall be well and securely chained and secured, and shall be subject to such regulations as the keepers legally charged with their custody shall from time to time prescribe. Prisoner so employed to be in legal care and custody of person to whom employed.

803. SEC. 203. Whenever any prisoner who shall be sentenced by any of the courts aforesaid, to pay a fine and

Prisoner sentenced to commitment until fine and costs are paid, allowed one dollar for each day.

costs, or either, and to be committed until paid, shall be employed at hard labor, pursuant to the foregoing provisions, he shall be allowed the sum of one dollar for each day's labor, and when he shall have earned the amount of such fine and costs, he shall be discharged.

Disposition of moneys arising from wages of prisoner.

804. SEC. 204. All sums of money arising from the wages or labor of any prisoner, pursuant to the provisions hereof, shall be placed to the credit of the county from which said prisoner comes, and which is liable to pay the expenses of the detention of such prisoner.

Felons disqualified from holding office, etc.

805. SEC. 205. Every person convicted of felony shall from thenceforth be disqualified from holding any office of honor, trust or profit, under the laws of this state, or practicing as an attorney in any of the courts thereof.

Disfranchisement of persons convicted of infamous crimes.

806. SEC. 206. Each and every person who may be convicted of the crime of rape, kidnapping, wilful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy or the crime against nature, incest, larceny, forgery, counterfeiting or bigamy, shall be deemed infamous, and shall be thereafter incapable of holding any office of honor, trust or profit, or voting at any election, of serving as a juror, and of giving testimony.

In what cases several counts may be joined.

807. SEC. 207. Whenever there are or shall be several charges against any person or persons for the same act or transaction, or for one or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment, in separate counts, and if two or more indictments are found in such cases, the court may order them consolidated.

Judgment against prosecutor in cases of malicious prosecution.

808. SEC. 208. When any person or persons have been or shall be bound by recognizance to keep the peace, or for their good behavior, and for the appearance of the party in the district court, or before any justice of the peace, if the prosecutor shall fail to appear and prosecute, or if upon the hearing it shall appear that the prosecution was commenced maliciously, without reasonable or proper cause, the court may, in its discretion, give judgment against the prosecutor for costs of prosecution and defense.

DIVISION XIV. OF PROCESS, INDICTMENT, ARRAIGNMENT, TRIAL, JUDGDMENT, EXECUTION AND WRIT OF ERROR.

809. SEC. 209. It shall be the duty of the district court when any indictment shall be found as a true bill, to make an order fixing the amount of bail, to each offense bailable by law, to be indorsed on the process by the clerk; and the sheriff, coroner or other officer who shall arrest the indicted person or persons shall let such indicted person or persons to bail upon his or her or their entering into a recognizance, with one or more sureties, in the sum or sums specified on said process, which recognizance shall be made to the people of the state, conditioned for the appearance of the indicted person or persons, on the first day of the next district court to be holden in and for such county, to answer said indictment, and not depart the court without leave, which recognizance shall be signed by the persons entering into the same, and certified by the officer taking it; every recognizance so taken is hereby declared to be valid and binding, and shall not be set aside or adjudged insufficient for want of form. Bail.

810. SEC. 210. It shall be the duty of the clerks of the district courts of each county of this state, to issue processes of *capias* for the apprehension of all persons indicted in said courts, respectively, to be directed to the sheriff, coroner and constables of the county where such indicted person or persons shall then be. And it shall be the duty of the sheriff, or in case of his absence or inability, of the coroner or some of the constables of the county to which said *capias* is directed, to arrest the person or persons therein named, and let him or them to bail, where the offense is bailable; or if the offense be not bailable, or no sufficient bail be offered, then the officer making the arrest shall bring his, her or their bodies to the jail of the county where said *capias* is returnable, and deliver such accused person or persons, together with the *capias* to the keeper of the jail, or shall hold such person or persons in custody to remain until discharged by due process of law. It shall also be the duty of any officer who shall take any recognizance in pursuance of this section, to return the same to Capias.

the clerk by the first day of the court to which it may be returnable. It shall be lawful for any officer who has the custody of any prisoner or prisoners, by virtue of this section, to pass through any counties which lie in his route between the place of arrest and the county to which he is taking such prisoner or prisoners, and to lodge or deposit said prisoner or prisoners, in any jail on his route for safe custody for one night or more, as occasion may require. And it is hereby made the duty of the board of county commissioners of the county where such indictment may be found, to pay to the officer who shall bring any offender or offenders from another county, his reasonable charge for such service: *Provided*, that nothing contained in this section or the preceding section shall prevent a *capias* being issued without such indorsement, returnable *instanter*, which *capias* shall authorize and require the accused to be arrested and immediately brought into court, when he or she shall be either committed, bailed or tried at the term at which the indictment is found.

Subpœna

811. SEC. 211. It shall be the duty of the clerks of the district courts to issue subpœnas, either on the part of the people, or the accused in any indictment, directed as in the preceding section, to any county in this state, and every witness who shall be duly subpœned, and shall neglect or refuse to attend any district court pursuant to the requisitions of such subpœna, shall be proceeded against and punished for contempt of the court; and attachments against witnesses who live in a different county from that where such subpœna is returnable, may be served in the same manner as *capiases* are directed to be served out of the county from which they issue, in the preceding section.

Jurors.

812. SEC. 212. It shall not be necessary to issue a *venire* in any criminal case; and in all criminal cases where the panel of jurors shall be exhausted by challenges or otherwise, and whether any juror has been elected and sworn or not, it shall be competent for the court to order on their minutes a tales for any number of jurors not exceeding twenty-four, returnable *instanter*, out of which persons so ordered to be summoned, it shall be lawful to impanel a jury for the trial of any criminal case; but should the tales

ordered be insufficient, by reason of challenges or otherwise to form an impartial jury, the court may from time to time make such further orders for additional talesmen returnable *instanter*, until a full jury shall be obtained.

Indictment for false imprisonment or wilful or malicious mischief.

813. SEC. 213. No bill of indictment for false imprisonment or wilful and malicious mischief, shall be found a "true bill" by any grand jury, unless a prosecutor is indorsed thereon by the foreman of the grand jury, with the consent of the prosecutor, except the same shall be found upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer in the necessary discharge of his duty, in which case it shall be stated at the end of the indictment how the same is found, and then no prosecutor shall be required; but in cases where the prosecutor is indorsed on the indictment, and the defendant shall be acquitted on the trial, the petit jury acquitting such defendant shall find, in addition to the verdict of "not guilty," whether the prosecutor had acted maliciously by instituting the prosecution, or not; and whenever the petit jury shall return with a verdict of "not guilty," that the prosecutor had acted maliciously in the premises, the court shall enter judgment, for costs, against the prosecutor, including a fee of twenty-five dollars to the prosecuting attorney, and award execution for the same as is done in civil cases; *provided*, that nothing herein contained shall render the prosecutor incompetent to be a witness either before a grand or petit jury.

Copies of indictment to be furnished accused.

814. SEC. 214. Every person charged with murder or other felonious crime, shall be furnished, previous to his arraignment, with a copy of the indictment, and a list of the jurors and witnesses. In all other cases he or she shall at his or her own request, or at the request of his or her counsel, be furnished with a copy of the indictment, and a list of the jurors and witnesses.

Arraignment and plea.

815. SEC. 215. Upon the arraignment of a prisoner it shall be sufficient, without complying with any other form, to declare orally by himself or herself, or his or her counsel, that he or she is not guilty, which declaration or pleas shall be immediately entered upon the minutes of the court by the clerk, and the mention of the arraignment

and such plea, shall constitute the issue between the people of the state and the prisoner; and if the clerk should neglect to insert in the minutes, the said arraignment and plea, it may and shall be done at any time by order of the court, and then the error or defect shall be cured.

Refusal to plead to be taken as plea of "not guilty."

816. SEC. 216. In all cases where the party indicted shall, on being arraigned, obstinately stand mute, or refuse to plead, standing mute or refusing to plead shall be adjudged and taken to be a denial of the facts charged in the indictment, and the court shall order the plea of "not guilty" to be entered on the minutes, and the trial, judgment and execution shall proceed in the same manner as it would have done had the party pleaded "not guilty."

Plea of "guilty"

817. SEC. 217. In all cases where the party indicted shall plead "guilty," such plea shall not be entered until the court shall have fully explained to the accused the consequences of entering such plea, after which, if the party indicted persists in pleading "guilty," said plea shall be received and recorded, and the court proceed to render judgment and execution thereon, as if he or she had been found guilty by a jury. In all cases where the court possesses any discretion as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation and mitigation of the offense.

Jury *de mediatate linguæ* not allowed.

818. SEC. 218. In no case shall the right to a trial by jury *de mediatate linguæ*, be allowed in criminal prosecutions.

In what cases trial may be in either of two counties.

819. SEC. 219. When an offense shall be committed on a county line, the trial may be in either county divided by such line; and where any offense shall be committed against the person of another, and the person committing the offense shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either county.

Grand jury to hear only witnesses for the people.

820. SEC. 220. In all complaints exhibited before the grand jury of any county, they shall hear the witnesses on behalf of the people only, and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of perjury when at least two witnesses to the same fact shall be necessary; the

foreman of the grand jury may swear or affirm all witnesses that may come before the grand jury.

821. SEC. 221. All trials for criminal offenses shall be conducted according to the course of the common law, except when this chapter points out a different mode, and the rules of evidence also of the common law shall, unless changed by this chapter, be binding on all courts and juries in criminal cases.

Trials to be had according to the course of common law.

822. SEC. 222. When the jury shall retire to consider their verdict in any criminal case, a constable or other officer shall be sworn or affirmed to attend the jury to some private and convenient place, and to the best of his ability keep them together without meat or drink, water excepted, unless by leave of the court, until they shall have agreed upon a verdict, and he shall not speak to them, except to ask them if they have agreed upon a verdict, nor suffer others to speak to them, and that when they shall have agreed on their verdict, he will return with them into court: *Provided, however*, that in every case of misdemeanor only, if the prosecutor for the people and the person on trial, by himself or counsel, shall agree, which agreement shall be entered on the minutes of the court, to dispense with the attendance of an officer upon the jury, or that the jury, when they have agreed upon their verdict, may write and seal the same, and after delivering the same to the clerk, may separate; it shall be lawful for the court to carry into effect any such agreement, and receive any such verdict so delivered to the clerk, as the lawful verdict of any such jury.

Jury retiring to consider verdict to be attended by sworn officer.

823. SEC. 223. If any officer sworn to attend upon a jury shall knowingly violate his oath or affirmation, or shall so negligently perform his duties that the jury shall separate without leave of the court, or obtain food or drink, except water, or if any person not belonging to the jury shall hold conversation with any of the jury, every person and officer so offending shall be punished for contempt of court, by fine or imprisonment or both, in the discretion of the court.

Officer in attendance upon jury punishable for contempt for violation of oath

824. SEC. 224. In any case where any person or persons shall be convicted of any crime or misdemeanor, in this chapter specified, or of any at common law, the court

Offenders convicted to pay costs of prosecution.

shall give judgment that the offender or offenders so convicted shall pay the costs of prosecution.

Property of person convicted subject to lien for fine and costs; clerk to issue execution.

825. SEC. 225. The property, real and personal, of every person who shall be convicted of any of the offenses punished by this chapter, shall be bound, and a lien is hereby created on the property, both real and personal, of every such offender from the time of his or her arrest, if he or she be arrested before indictment, if not, then from the time of finding the indictment, at least so far as will be sufficient to pay the fines and costs of prosecution; and it shall be the duty of the clerk of the district court, at the end of each term to issue one execution for every fine which shall have been imposed during the term and which remains unpaid, and for all costs of conviction in criminal cases, in which execution shall be stated the day when the arrest was made or indictment was found, as the case may be, which execution shall be delivered to the sheriff or coroner, and shall be by him levied on all the estate, real and personal, which the defendant or defendants possessed as his or her own real or personal estate, on the day mentioned in such execution, and any property, real and personal, subsequently acquired by him or her, which property so to be levied upon shall be advertised as in civil cases, and sold for what it will bring. It shall be no objection to the selling of any property under such execution that the body is in custody for such fine and costs.

How persons convicted may replevy fine and costs.

826. SEC. 226. It shall and may be lawful for any person or persons convicted of any criminal offense to replevy the judgment for the fine and costs, or the costs only, when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient free-holders entering into a recognizance before the district court, to the people of this state, for the payment of such fine and costs, or costs only, within five months of the date of the acknowledgment, which recognizance so taken is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same, and upon the breach thereof the clerk is hereby authorized to issue an execution against the goods and chattels, lands and tenements of the persons who entered

recognizance, in the same manner as if it had been a judgment of the court, which execution shall be collected in the same manner as is prescribed in the preceding section. No *scire facias* shall be necessary previous to issuing such execution. In all cases where the person or persons convicted as aforesaid shall replevy the fine and costs, as is provided in this section, then no execution shall issue for said fine and costs as is prescribed in the next preceding sections; and further, such person or persons after replevying the fine and costs as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment in consequence of any conviction, unless where imprisonment is by this act made a part of the punishment; in that case, such convicted person or persons shall be discharged from his or her or their imprisonment at the expiration thereof, if he, she or they have replevied the fine and costs as aforesaid.

827. SEC. 227. Executions for fines and costs of prosecutions and on recognizances, taken in pursuance of the preceding sections, may be issued into any county in this state.

Executions may issue to any county.

828. SEC. 228. Whenever it shall be made satisfactorily to appear to the district court of any district, or to any judge thereof in vacation, after all legal means have been exhausted, that any person who is confined in jail, or in the penitentiary or other place of confinement, for any fine or costs of prosecution for any criminal offense, hath no estate whatever wherewith to pay such fine and costs, or costs only, it shall be the duty of the said court or judge to discharge such person from further imprisonment for such fine and costs, which discharge shall operate as a complete release of such fine and costs; *provided*, that nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned as part of his or her punishment.

Persons confined in jail for non-payment of fine and costs, having no estate, may be discharged. (Amendment 1877.)

829. SEC. 229. In all cases of bail for the appearance of any person or persons charged with any criminal offense, the security or securities of such person or persons may, at any time before judgment is rendered, upon *scire*

Surrender of principal by surety in recognizance.

facias to show cause why execution should not issue against such security or securities, seize and surrender such person or persons charged as aforesaid, to the sheriff of the county wherein the recognizance shall be taken, and it shall be the duty of such sheriff, on such surrender and the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person or persons so charged as aforesaid into custody, and by writing acknowledge such surrender, and thereupon the security or securities shall be discharged from any such recognizance, upon payment of all costs occasioned thereby.

Bills of exceptions.

830. SEC. 230. In the trial of any person or persons for any crime or misdemeanor, it shall be the duty of the judge before whom such trial is pending, to sign and seal any bill of exceptions rendered to the court during the progress thereof: *Provided*, that the truth of the case be fairly stated in such bill of exceptions; and thereupon the said exceptions shall, by the clerk of the said court, be entered in the record of such trial, and become to all intents and purposes a part thereof.

Writ of error.

831. SEC. 231. The party aggrieved by manifest and material error appearing of record in any capital prosecution by indictment, may be relieved by writ of error upon complying with the following terms, to wit: The party complaining that error has been committed, shall obtain a certified copy of the record from the clerk, and from the judge of the district court, or from the person who acted as prosecuting attorney on the trial, a certificate expressive of an opinion that said record contains a full and true history of the proceedings on said trial, which record, together with the assignment of the errors relied on for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof, in vacation; and if after inspecting such transcript the court or justice aforesaid shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted by order indorsed on the back of said transcript; the allowance of such writ of error shall be sufficient authority to the clerk of the supreme court to issue a *supersedeas* to stay the execution of the sentence of death, but not the

discharge of the prisoner from jail. Where any judgment, the execution whereof has been stayed by writ of error as aforesaid, shall be affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of any prisoner therein mentioned, at the time specified.

How *supersedeas* obtained in cases not capital.

832. SEC. 232. Writs of error in all criminal cases not capital, shall be considered as writs of right, and issue of course, but no writ of error shall be a *supersedeas*, unless the supreme court or one of the justices thereof, in vacation, after inspecting a copy of the record, certified as in the preceding section, together with an assignment of the errors relied on for a reversal of the judgment, shall be of opinion that there is reasonable cause for allowing a writ of error; in such case the writ shall be granted by order indorsed on the back of such record, in which case the clerk of the supreme court shall issue a *supersedeas*, which shall have the effect to stay the execution of the sentence, but not to discharge the prisoner from custody. If the party applying for such writ of error shall at the time be in custody, under the authority of the judgment prayed to be superseded, and the said court or justice shall be of opinion that the party obtaining such writ of error ought to be bailed until the determination of such writ of error, the said supreme court or justice may make an order to discharge such prisoner from custody, upon the prisoner entering into a recognizance to the people of the state, before the sheriff of the county where he or she shall be imprisoned, in such sum and with such security as said court or justice shall prescribe, which recognizance shall be conditioned that the prisoner will appear in the next district court to be holden in the county where the trial of such prisoner took place, and at each subsequent term of the district court, on the first days, until the determination of such writ of error, and that he will be present and submit to such order as the supreme court shall make in the premises, and will not at any of the terms of said court in which he shall be bound to appear by said recognizance, depart the court without leave. The recognizance so taken shall be returned to the

next district court, and there entered of record, and such proceedings may be thereon had, in case of a breach of the conditions of such recognizance, as shall be according to the course of the common law: *Provided, however*, that in cases where corporeal punishment is inflicted the prisoner shall in no case be bailed; upon the affirmance of any judgment brought into the supreme court by virtue of this section the said court shall order and direct the district court to carry into effect the judgment of the court below. In case of affirmance, judgment shall be given for costs against the party prosecuting such writ of error, and execution shall issue thereupon from the supreme court.

Confinement in county jail until establishment of penitentiary.

833. SEC. 233. Until such time as there shall be established and procured a penitentiary in this state for the confinement of persons convicted of offenses under this chapter, the court shall have power, on passing sentence, to provide that such person shall be confined for such term as may be fixed therefor in the county jail where the offense was committed, and if there be no jail in such county, then the court shall provide for such confinement in some other county jail in the state, and the county in which said offense was committed, shall pay the expenses of such confinement.

DIVISION XV. LIMITATION OF INDICTMENTS AND PENAL ACTIONS.

Limitations.

834. SEC. 234. No person or persons shall be prosecuted, tried or punished for any offense denominated by the common-law felony, (murder, arson and forgery excepted), unless the indictment for the same shall be found by a grand jury within three years next after the offense shall have been done or committed, nor shall any person be prosecuted, tried or punished for any misdemeanor or other indictable offense below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information or action for the same shall be found or instituted within one year and six months from the time of committing the offense or incurring the fine or forfeiture: *Provided*, that nothing herein contained shall extend to any person fleeing from justice: *And provided, also*, that where any suit, information or indictment for any crime or misde-

meanor is limited by any statute to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute: *Provided, also*, that where any indictment, information or suit shall be quashed, or the proceedings on the same set aside or reversed on writ of error, the time during the pendency of such indictment, information or suit so quashed, set aside or reversed, shall not be reckoned within this statute so as to bar any new indictment, information or suit for the same offense.

DIVISION XVI. GENERAL PROVISIONS.

Powers of judges of supreme and district courts, and justices of the peace, as conservators of the peace.

835. SEC. 235. The judges of the supreme and district courts in their respective districts, and justices of the peace in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions as herein designated, and shall have full power to enforce or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offenses, or for the preservation and observance of the peace. They shall have power to cause to be brought before them or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require; and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person in this state, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and also all such persons as are not of good fame; and the said judge or justice of the peace, being satisfied by the oath of one or more witnesses of his or her bad character, or that he or she had used threats as aforesaid, shall cause such person or persons to give good security for the peace or for their good behavior toward all the people of this state, and particularly toward the individual threatened. If any person against whom such proceedings are had, shall fail to give a recognizance, with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county until such security be given, or until

the next term of the district court. Such judge or justice of the peace shall also take recognizances for the appearance of all witnesses of such court. All recognizances to be taken in pursuance of this section, shall be returnable to the next district court to be holden in the proper county where all such recognizances shall be renewed or dismissed, as the said district court shall upon the examination of the witnesses deem to be just and right; and where the person or persons committed are in jail at the sitting of such district court, the court shall examine the witnesses, and either continue the imprisonment, bail the prisoner or discharge him or her, as to the said court shall appear to be right, having due regard for the safety of the citizens of this state.

Pursuit to be made by sheriffs, constables, etc., when felonious offense committed.

836. SEC. 236. When any felonious offense shall be committed, public notice thereof shall be immediately given in all public places near where the same was committed, and fresh pursuit shall forthwith be made after every person guilty thereof, by sheriffs, coroners, constables, and all other persons who shall be by any of them commanded or summoned for that purpose; every such officer who shall not do his duty in the premises, shall be punished by fine in a sum not exceeding one hundred dollars.

Issuing of warrant by judges and justices of the peace; proceedings after arrest. Amendment, 1876.

837. SEC. 237. It shall be lawful for any of the aforenamed judges or justices of the peace, upon oath or affirmation being made before him, that any person or persons have committed any criminal offense in this state, or that a criminal offense has been committed, and that the witness or witnesses have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant under his hand, commanding the officer or person charged with the execution thereof, to arrest the person or persons so charged, and bring him, her or them, before the officer issuing such warrant, or in case of his absence, before any other judge or justice of the peace; the said judge or justice of the peace, before whom any person shall be brought in pursuance of such warrant or shall be brought without warrant, and charged with any criminal offense, before he shall commit such prisoner to jail, admit to bail or discharge him or her from custody, shall inquire

into the truth or probability of the charge exhibited against such prisoner or prisoners, by the oath of all the witnesses attending; and shall, upon consideration of the facts and circumstances then proved, either commit such person or persons so charged, to jail, admit him or them to bail, or discharge him or them from custody. When the proof is evident, or the presumption is great, that a person charged with treason, murder or any offense punishable by death, is guilty of such crime, no justice of the peace shall admit such person to bail. *And provided*, that in all cases where the charge is sodomy, rape, arson, burglary, robbery, forgery or counterfeiting, it shall be the duty of any justice of the peace, whenever any person or persons shall be brought before him for the same or either of them, to associate with himself some neighboring justice of the peace, previous to the examination of the witnesses, and they two shall have the power to bail such prisoner or prisoners, or commit him, her or them to jail, in case no good and sufficient bail is offered, or discharge the prisoner or prisoners according to the proof that is adduced, and the law arising thereon. All recognizances taken in pursuance of this section, shall require the accused to appear at and on the first day of the next district court, or if the court be then sitting, on some day of the term to be therein designated.

838. SEC. 238. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail as aforesaid, or admit him to bail, to bind by recognizance the prosecutor, and all such as do declare anything material to prove the offense charged, to appear before the next district court on the first day thereof, or if the said court shall be then sitting, on some day to be therein designated (and in all cases at the same time and place as the person or persons accused by said witnesses shall be bound to appear), to give evidence touching the offense so charged, and not depart the court without leave. If any person, upon being required to enter into recognizances as aforesaid, shall refuse, it shall be lawful for such judge or justice of the peace to commit him or her to jail, there to remain until he or she shall enter into such recognizance, or be otherwise discharged by due course of law.

Recognizance of witnesses for prosecution.

Recognizances generally.

839. SEC. 239. All recognizances that have any relation to criminal matters, shall be taken to the people of the state; shall be signed by the person or persons entering into the same; be certified by the judge, justice of the peace or other officer taking the same, and delivered to the clerk of the district court on or before the day mentioned therein for the appearance of the witness or accused therein bound. Recognizances taken into courts of record, need not be signed or certified as aforesaid. Recognizances for assaults, batteries and affrays shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice for the trial of the offender.

Bail may be taken in vacation; amount to be endorsed on warrant

840. SEC. 240. Where any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for murder or other offense punishable with death, or for not entering into a recognizance to appear and testify, any judge, or any two justices of the peace, may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail, to indorse on the warrant of commitment, in bailable cases, in what sum bail ought to be taken.

Officer with warrant may pursue offender into adjoining county.

841. SEC. 241. When a charge shall be exhibited upon oath before any judge or justice of the peace, against any person, for a criminal offense, it shall be the duty of the judge or justice of the peace before whom the charge shall be made, to issue his warrant for the apprehension of the offender, directed to all sheriffs, coroners and constables within the state; and it shall be the duty of any sheriff, coroner or constable into whose hand any such warrant shall come, to execute the same within their respective counties, and if the offender shall be found therein, to arrest and convey such offender before the judge or justice of the peace who issued the warrant, or before some other justice of the peace of the same county. When any such sheriff, coroner or constable, or other person called to the assistance of such sheriff, coroner or constable, shall be in pursuit of any offender, having a warrant for the apprehension of such offender, and the offender shall cross the line into the

adjoining county, such sheriff, coroner or constable or other person may pursue such offender into the adjoining county and make the arrest, as if such offender had been found in the county of the officer in pursuit.

Judge or justice issuing warrant may grant authority to any person for its execution.

842. SEC. 242. Any judge or justice of the peace issuing any such warrant, may make an order thereon, authorizing a person to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the state, by apprehending and conveying such offender before the judge or justice issuing such warrant, or before some other justice of the same county, and all sheriffs, coroners and constables and others, when required, in their respective counties, shall aid and assist in the execution of such warrant.

Transportation and delivery of prisoner.

843. SEC. 243. Any person or persons, officer or officers, who may have the custody of any offender or offenders, by virtue of either of the two preceding sections, may take or carry such prisoner or prisoners into any other county which may be situated on his or their way back to the county from which the said prisoner or prisoners fled, and may deposit such prisoner or prisoners in any jail on his or their route, for safe custody, for one night or more, as occasion may require. Upon their arriving in the county to which the prisoner or prisoners is or are sent, under the last preceding section, such officer or officers, person or persons, shall deliver such prisoner or prisoners into the custody of the sheriff or jailer, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or jailer, to receive and detain such prisoner or prisoners, until he, she or they obtain bail, if the offense be bailable, or be otherwise discharged by due course of law.

Not necessary to validity of warrant that it should be under seal of judge or justice.

844. SEC. 244. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offense, or warrant of commitment, or search warrant, that it be under the seal of the judge or justice of the peace granting or issuing the same; but every such warrant under the hand of the judge or justice of the peace, shall be as valid in law as if a seal were affixed. And no person shall be discharged on *habeas*

corpus from his imprisonment merely by reason of defect of legal precision or want of technical form in the warrant of commitment, but the court or judge awarding such *habeas corpus*, shall, in all such cases, proceed and determine as if the *mittimus* had all legal and technical form: *Provided*, sufficient appears on the face of the *mittimus* to ascertain for what crime or offense such prisoner or prisoners shall have been committed.

In what cases search warrant to issue.

845. SEC. 245. It shall be lawful for any judge or justice of the peace, upon complaint made before him, upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property are or is concealed in any dwelling house, out house, garden, yard or other place or places, to issue a warrant, under his hand, commanding every such dwelling house or place to be searched in the daytime; and if any of the goods described in any such warrant be found therein, then that the said goods be seized or brought before the judge or justice issuing said warrant. If upon examination of witnesses before the judge or justice of the peace who issued such warrant, it shall be determined by such judge or justice of the peace that the goods so brought before him have been stolen, it shall be the duty of such judge or justice, either to keep possession of, or to deliver, or cause to be delivered, such goods, to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next district court after the goods shall be seized, and an action shall not be commenced against the person or persons in whose possession such goods shall have been found, for the recovery thereof, within one month after the district court shall have been held after such seizure, the said district court shall, at their next session, order such goods to be redelivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods may at the time be. In case the judge or justice of the peace, shall, upon such examination as aforesaid, determine that such goods so seized had not

been stolen, then the goods shall be immediately restored to the person from whose possession they were taken.

Names of witnesses to be endorsed on warrant of commitment.

846. SEC. 246. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offense is not by law bailable, to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said judge or justice.

Copy of warrant of commitment and names of witnesses to be furnished prisoner on demand.

847. SEC. 247. Whenever any prisoner in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer a copy of said warrant of commitment, said sheriff or jailer shall indorse on the said copy the names of the witnesses written thereon as aforesaid; and any justice or judge who shall neglect to write the name or names of the witnesses aforesaid on the warrant of commitment, or any sheriff or jailer who shall neglect to indorse the name of said witness or witnesses on any copy of said commitment, each justice, judge, sheriff or jailer offending in the premises, shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name of and for the use of any person who shall sue for the same in any court of record.

Attendance of witnesses upon hearing of *habeas corpus*.

848. SEC. 248. Whenever a *habeas corpus* shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpœna to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses therein named, to appear before such judge or court, at the time and place when and where such *habeas corpus* shall be returnable; it shall be the duty of such sheriff to serve such subpœna, if it be possible, in time to enable such witness or witnesses to attend; it shall be the duty of the witness or witnesses thus served with said subpœna to attend and give evidence before the judge or court issuing the same, on pain of being deemed guilty of a contempt of court and proceeded against accordingly by said judge or court.

Examination of witnesses on hearing of *habeas corpus.*

849. SEC. 249. On the hearing of any *habeas corpus* issued as aforesaid, it shall be the duty of the judge or court who shall hear the same, to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offense named in the warrant of commitment as aforesaid, whether said offense be technically set out in said commitment or not.

Exceptions to decisions and opinions allowed

850. SEC. 250. Exceptions taken to opinions or decisions of any court in this state, refusing motions in arrest of judgment, for new trials or for continuances, or change of venue shall be allowed in criminal cases and in penal and *qui tam* actions; and the party excepting to such decisions may assign the same for error, in the same manner as in civil cases.

Penalty for selling, bartering or giving away spirituous liquors on day of election.

851. SEC. 251. If any innkeeper of any hotel, tavern, saloon, or other place, whether licensed to vend spirituous, vinous, fermented or malt liquors or not, or any other person shall barter, sell or give away to any person or persons any spirituous, vinous, fermented or malt liquors, between the hours of sunrise and sunset on the day of any general election in this state, or within any incorporated city in this state, between the hours above named, on the day of the election of the mayor thereof, shall upon conviction thereof, before any justice of the peace or court of competent jurisdiction, forfeit and pay a fine of not less than ten nor more than one hundred dollars for the first offense, and for a second offense, a fine of not less than fifty nor more than two hundred dollars.

Wholesale dealers excepted.

852. SEC. 252. This act shall not apply to wholesale grocers or merchants who may barter or sell spirituous, vinous or malt liquors on the days mentioned in the preceding section, to persons or firms in quantities greater than twenty gallons.

Disposition of fines.

853. SEC. 253. That all fines imposed by virtue of any of the laws of this state, for the punishment of crimes and misdemeanors, and all forfeited recognizances, shall when collected, be paid into the treasury of the county where the offense shall be tried, for the use of such county, except in cases of change of venue, in which cases the money so collected shall be paid into the treasury of the county from which the change was made.

854. SEC. 254. It shall be the duty of the county attorney of the proper county to collect by suit or otherwise, all forfeited recognizances now due, as well as those that may hereafter become due, and pay over the same to the county treasurer, as provided for in section two hundred and fifty-three. Collection of forfeited recognizances.

855. SEC. 255. Nothing herein contained shall be construed to change the forms of recognizances or the mode of procedure to collect the same, on the receipt of a part of said fines by the informer, as now provided for by the laws of this state. Forms of recognizances or mode of procedure to collect same, not to be changed.

856. SEC. 256. In every case where a portion of a fine imposed upon a defendant by any statute, is now or shall be authorized to be paid to the informer in said case, and neither the court, grand or petit jury, shall indicate who is the informer, the whole of said fine shall be paid into the treasury of the county as is hereinbefore provided in this act. If informer is not designated, whole of fine to be paid into county treasury.

857. SEC. 257. All fines heretofore paid by any defendant in cases where by law a portion of said fine was by the statute appropriated to the informer, and no informer was known to the court, that portion of the fine due to said informer, now in the hands of any justice of the peace, probate court or clerk of the district court, shall be paid into the treasury of the county wherein the conviction was had and the said fine or fines were paid, and in case the office of any justice of the peace, county judge or clerk of the district court, into whose hands any such fines may have been paid, shall have expired, it shall be the duty of the attorney acting for the county into whose treasury the said fines are by this act directed to be paid, to demand the payment of said fines so remaining unpaid, and in case of refusal or neglect to pay the same, suit may be instituted in the name of the county for the recovery of the same in any court of competent jurisdiction. Payment of fines heretofore collected.

858. SEC. 258. That larceny, or the buying or receiving goods or other things obtained, by larceny, burglary or robbery, knowing the same to have been so obtained, in all cases where the money or the value of the thing stolen, Larceny or receiving of stolen goods where value does not exceed twenty dollars. (Amendment, 1877.)

bought or received, does not exceed twenty dollars, is hereby declared to be a misdemeanor.

Punishment for larceny or receiving stolen goods of value not exceeding twenty dollars. (Amendment, 1870.)

859. SEC. 259. Every person who shall be convicted as hereinafter provided, of larceny, or of buying or receiving goods or other things obtained by larceny, burglary or robbery, knowing the same to have been so obtained in all cases where the money or the value of the thing stolen, bought or received does not exceed twenty dollars, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment and hard labor for a term not exceeding sixty days, or both such fine and imprisonment.

Powers of justice of the peace in cases declared misdemeanors. (Amendment, 1870.)

860. SEC. 260. In all cases declared misdemeanors by section two hundred and fifty-eight of this chapter, any justice of the peace of the county in which the offense is committed, may upon complaint being made as is now required by law, issue a warrant directed to any proper officer of his county for the arrest of any person so charged with any such misdemeanor, and upon the arrest of such person the justice of the peace before whom such person is brought for trial, shall hear and determine the cause, and if he find the accused guilty, shall assess the fine and fix the term of imprisonment, or both, as prescribed in section two hundred and fifty-nine: *Provided*, the accused may have a trial by jury, which shall be summoned as in cases before justices of the peace for assault and battery.

Record of trial.

861. SEC. 261. The justice of the peace shall in all trials held under the provisions of this act, keep a brief record of the proceedings in his docket-book, and whenever a fine is imposed, either as the whole or a part of the judgment of the justice, he shall forthwith proceed to render judgment thereon for the amount of said fine, and all costs in the case, and such defendant shall remain in the custody of the officer until such fine be paid.

Execution for fines and costs to be levied on personal property.

862. SEC. 262. Upon the rendition of such judgment for fine and costs as is provided for in section two hundred and sixty-one, the justice of the peace shall issue execution for the same, which may be levied upon any personal property not exempt by law, of the person so convicted, which said property shall be sold for whatever it will bring

in cash, after giving notice of the time and place of such sale, as in civil cases.

On return of no property, *capias* to issue.

863. SEC. 263. If the officer shall return on such execution that the person so convicted has no goods and chattels whereof to make the said fine and costs, the justice shall issue a *capias* against the body of the person so convicted, and the officer shall arrest such person, and he shall be punished by imprisonment and hard labor forty-eight hours for each and every five dollars of said fine and costs, and the justice shall indorse the term of said last-mentioned imprisonment on the *capias*.

Proceedings in case accused pleads guilty.

864. SEC. 264. If any person accused of any of the offenses declared misdemeanors by this act shall confess himself guilty, the justice shall assess the fine or fix the term of his imprisonment and hard labor, or both, and proceed to have the fine collected, and the judgment of the justice carried into effect as hereinafter provided.

In what manner appeals taken to district court.

865. SEC. 265. Appeal may be taken to the district court by the accused when convicted under this act, in the same manner and on the same terms as is now provided by law for appeals in cases of assault, assault and battery, and affray.

Under what laws persons may be prosecuted.

866. SEC. 266. Any person charged with any offense specified in this act, may be prosecuted either under the provisions of this act, or under the provisions of an act entitled "An act concerning criminal jurisprudence," passed November 5, 1861, and the amendments to the said last mentioned act.

County commissioners to provide work for such convicts.

867. SEC. 267. It shall be the duty of county commissioners of the proper county to furnish work either in the county jail or elsewhere in the county, of a suitable and proper kind for all persons convicted under this act, and the said county commissioners shall make and prescribe all necessary and proper rules and regulations concerning the working of said convicts as hereinbefore provided for; and in case the said commissioners fail to provide differently, the county jail shall be the place of imprisonment.

868. SEC. 268. That section twenty of this chapter shall be hereafter construed so that the death penalty for

Construction of section twenty. (Amendment 1870.)

the crime of murder shall not be ordered to be inflicted by the courts of the state, unless the jury trying the case shall, in their verdict of guilty, also indicate that the killing was deliberate or premeditated, or was done in the perpetration or attempt to perpetrate some felony.

Sentence in case verdict does not indicate deliberation or premeditation.

869. SEC. 269. Any person hereafter found guilty of the crime of murder, by the verdict of a jury, without any indication in such verdict whether the killing was deliberate or premeditated, or was done in the perpetration or attempt to perpetrate some felony, shall be sentenced to confinement in the penitentiary for and during such person's natural life; which confinement may be with or without hard labor, or both, in the discretion of the court.

Plea of misnomer not to abate prosecution.

870. SEC. 270. That whenever any defendant or defendants, in an indictment, shall plead in abatement a misnomer, the said indictment shall not be quashed, nor the prosecution thereby abated, but the true name as set forth in such plea shall be entered of record by the clerk, and the cause proceed as though the indictment contained the correct name of the party accused.

Demurrers or motions to quash to be in writing.

871. SEC. 271. When any defendant shall wish to demur, or move to quash an indictment, such defendant shall make such demurrer or motion in writing, and therein specially and particularly set down, state and point out the defects of, or reasons why such indictment should be quashed, and the court shall hear no other reasons than those so specially stated and set forth.

AN ACT CONCERNING CRIMINAL PROCEEDINGS.

[Session Laws, 1872.]

Qualifications of jurors in criminal cases.

872. SECTION 1. No person summoned as a juror in a criminal case, shall be disqualified to serve as such by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused: *provided* the court shall be satisfied, from the examination of the juror or from other evidence, that he will render an impartial verdict, according to the law and the evidence submitted to the jury in the trial of such cause.

873. SEC. 2. That the people and the accused shall be entitled, each, to fifteen (15) peremptory challenges in capital cases, and in all other cases where the punishment may be imprisonment in the penitentiary, to ten (10) peremptory challenges each. Challenges.

AN ACT RELATING TO THE COMPETENCY OF THE ACCUSED AS A WITNESS IN CRIMINAL CASES.

[Session Laws, 1872.]

874. SECTION 1. Hereafter in all criminal cases tried in any court of this state, after the jury has heard the evidence of all the witnesses on the part of the prosecution and defense, including the rebuttal testimony, the accused, if he so desire, shall be sworn as a witness in the case, and the jury shall give his testimony such weight as they think it deserves, but in no case shall a neglect or refusal of the accused to testify be taken or considered any evidence of his guilt or innocence. Testimony of accused.

AN ACT TO AUTHORIZE THE GOVERNOR OF THE STATE OF COLORADO TO COMMUTE PUNISHMENT FOR OFFENSES AGAINST THE LAWS OF THE STATE.

[Session Laws, 1872.]

875. SECTION 1. That the governor of the state of Colorado be and he is hereby fully authorized and empowered, whenever he deems it proper and advisable, and consistent with the public interests, and the rights and interests of the condemned, to commute the sentence in any case, by reducing the penalty as follows, to wit: In a capital case, to imprisonment for life, or for a term of not less than ten (10) years at hard labor. Commutation of sentence.

AN ACT CONCERNING INDIGENT DEFENDANTS IN CRIMINAL CASES.

[Session Laws, 1876.]

876. SECTION 1. Whenever any person indicted in a court of the state of Colorado shall make affidavit, setting forth that there are witnesses whose evidence is material Witnesses in case of indigent defendants.

to his defense; that he cannot proceed to trial without them; what he expects to prove by each of them; that they are within the judicial district in which the court is held, or within one hundred miles of the place of trial; and that he is not possessed of sufficient means and is actually unable to pay the fees of such witnesses,—the court in term, or the judge thereof in vacation, if it appears to said court or the judge thereof that the evidence of such witnesses would be material in the trial of the cause, may order that such witnesses be subpœnæd, if found within the limits aforesaid. In such case, the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnæd in behalf of the people.

CHAPTER XXV.

DAMAGES.

AN ACT CONCERNING DAMAGES, AND TO REPEAL AN ACT ENTITLED "AN ACT CONCERNING DAMAGES," APPROVED FEBRUARY 8, 1872.

Be it enacted by the General Assembly of the State of Colorado:

Liability of corporations or individuals owning or managing any railroad, coach, or public conveyance, for death from injuries resulting from defects, negligence, &c.

877. SECTION 1. Whenever any person shall die from any injury resulting from, or occasioned by the negligence, unskilfullness or criminal intent of any officer, agent, servant or employé, whilst running, conducting or managing any locomotive, car or train of cars, or of any driver of any coach or other public conveyance whilst in charge of the same as a driver, and when any passenger shall die from any injury resulting from, or occasioned by any defect or insufficiency in any railroad or any part thereof, or in any locomotive or car, or in any stage coach, or other public conveyance, the corporation, individual or individuals in whose employ any such officer, agent, servant, employé, master, pilot, engineer or driver, shall be at the time such injury is committed, or who owns any such railroad, locomotive, car, stage coach, or other public conveyance, at the time any such injury is received, and resulting from, or occasioned by defect or insufficiency above described,

shall forfeit and pay for every person and passenger so injured the sum of not exceeding five thousand (5000) dollars, and not less than three thousand (3000) dollars, which may be sued for and recovered:

First—By the husband or wife of deceased; or,

Second—If there be no husband or wife, or he or she fails to sue within one year after such death, then by the heir or heirs of the deceased; or,

By whom damages may be recovered.

Third—If such deceased be a minor or unmarried, then by the father and mother who may join in the suit and each shall have an equal interest in the judgment; or if either of them be dead, then by the survivor. In suits instituted under this section, it shall be competent for the defendant for his defense to show that the defect or insufficiency named in this section, was not a negligent defect or insufficiency.

878. SEC. 2. Whenever the death of a person shall be caused by a wrongful act, neglect or default of another and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured.

Who liable for damages for death caused by wrongful act, etc., of another.

879. SEC. 3. All damages accruing under the last preceding section, shall be sued for and recovered by the same parties and in the same manner as provided in the first section of this act, and in every such action the jury may give such damages as they may deem fair and just (not exceeding five thousand (5000) dollars), with reference to the necessary injury resulting from such death, to the surviving parties, who may be entitled to sue; and also having regard to the mitigating or aggravating circumstances attending any such wrongful act, neglect or default.

Jury to consider mitigating or aggravating circumstances in making award

880. SEC. 4. All actions provided for by this act shall be brought within two years from the commission of the alleged negligence resulting in the death for which suit is brought.

Action to be brought within two years.

881. SEC. 5. The act "concerning damages," passed

Repeal.

by the council and house of representatives of the territory of Colorado, and approved February 8, 1872, is hereby repealed.

Approved, March 7, 1877.

CHAPTER XXVI.

DESCENTS AND DISTRIBUTIONS.

[Revised Statutes, Chapter XXIII.]

In what manner real or personal estate, not otherwise limited or disposed of, shall descend. (Amendment, 1876.)

882. SECTION 1. Whenever any person having title to any real estate, or property having the nature or legal character of real estate, or personal estate, undisposed of or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary to his kindred, male and female, subject to the payment of his debts, in the following course and manner, namely: If such intestate leave a husband or wife and children, or the descendants of any children, him or her surviving, one half of such estate shall descend to such surviving husband or wife, and the residue thereof to such surviving children and descendants of children as hereinafter limited; if such intestate leave a husband or wife, and no child nor descendants of any child, then the whole of the estate of such intestate, real and personal, shall descend to and vest in such surviving husband or wife as his or her absolute estate, subject to the payment of debts as aforesaid. Dower and the tenancy by the courtesy are abolished, and neither husband nor wife shall have any share in the estate of the other, save as herein provided. Except in the cases above enumerated, the estate of every intestate shall descend and be distributed as follows:

First—To his children surviving, and the descendants of his children who are dead, the descendants, collectively, taking the share which their parent would have taken if living.

Second—If there be no children nor their descendants, then to his father; if there be no father, then to his mother; if there be no mother, then to the brothers and sisters, and

to the descendants of brothers and sisters who are dead, the descendants, collectively, taking the share of their immediate ancestors in equal parts.

Third—If there be no children nor their descendants, nor father, mother, brothers, sisters nor descendants of deceased brothers or sisters, nor husband nor wife living, then to the grandfather, grandmother, uncles, aunts and their descendants, the descendants taking, collectively, the share of their immediate ancestors in equal parts.

Fourth—And if none of the relatives above enumerated be living, then to the nearest lineal ancestors and their descendants, the descendants, collectively, taking the share of their immediate ancestors in equal parts.

Posthumous children or descendants.

883. SEC. 2. All posthumous children or descendants of the intestate, shall inherit in like manner as if born in the lifetime of the intestate; but no right of inheritance shall accrue to any person other than the children or descendants of the intestate, unless they are in being, and capable in law of taking as heirs, at the time of the intestate's death.

Children and collateral relatives of the half-blood.

884. SEC. 3. Children and descendants of children, of the half-blood, shall inherit the same as children and descendants of the whole-blood; but collateral relatives of the half-blood, shall inherit only half the measure of collateral relatives of the whole-blood, if there be any of the last named class living.

Advancements to be charged against distributive share.

885. SEC. 4. Where any of the children of the intestate shall have received, in his lifetime, any real or personal estate, by way of advancement, and the other heirs desire it to be charged to him, the county judge shall cite the parties to appear before him, shall hear proof upon the subject, and shall determine the amount of such advancement or advancements to be thus charged.

What not deemed an advancement.

886. SEC. 5. The maintenance, education, or supply of money, to a child under the age of majority, without any view to apportion or settlement in life, shall not be deemed an advancement, under section four of this chapter.

Alienage of descendants.

887. SEC. 6. The alienage of the descendants, shall not invalidate any title to real estate which shall descend from him or her.

Illegitimate children.

888. SEC. 7. Illegitimate children shall inherit the same as those born in wedlock, if the parents subsequently intermarry, and such children be recognized, after such intermarriage, by the father, to be his.

Divorces not to affect rights of children.

889. SEC. 8. Divorces of husband and wife shall not affect the right of children previously begotten, to inherit their property.

Who shall apportion and distribute estates.

890. SEC. 9. County judges and administrators of the estate of persons dying intestate within this state, shall apportion and distribute estates of intestates according to this chapter.

Rule of descent of real and personal estate of bastard.

891. SEC. 10. The rule of descent of all property of whatsoever kind or nature, real and personal, of any bastard or illegitimate person, dying intestate in this state, and leaving property and effects therein, shall be as follows, to wit: on the death of any such person intestate, his or her property, estate and effects, shall descend to and vest in the widow or surviving husband and children, as the property and effects of other persons in like cases. In case of the death of any such illegitimate person leaving no children or descendants of a child or children, then the whole property and estate, rights, credits and effects, shall descend to and vest in the widow or surviving husband. In case of the death of any such illegitimate person, leaving no widow, surviving husband or descendants, then the property and estate of such person shall descend to and vest in the mother and her children, and their descendants; to the mother one-half, and the other half to be equally divided between her children and their descendants, the descendants of a child taking the share of their deceased parent or ancestors. In case of the death of any such illegitimate person, leaving no heirs as above provided, then the property and effects of whatsoever kind or nature, shall pass to and vest in the next of kin to the mother of such illegitimate person, in the same manner as the estate of a legitimate person would by law pass to the next of kin.

What widow allowed to retain as her sole property.

892. SEC. 11. If any decedent leaves a widow residing in this state, in all cases she shall be allowed to have and retain as her sole and separate property, one bed and bedding, wearing apparel of herself and family, one cow

and calf, her saddle and bridle, one horse, household furniture for herself and family, and also the same amount and species of property as is or may be by law exempt from execution; said property shall be retained by the widow, and set apart to her by the executor or administrator, and shall in no case be subject to the payment of debts of the deceased.

Value of specified articles in money or other personal property to be allotted widow, if she so elect.

893. SEC. 12. When an inventory shall have been made of the personal estate of any testator or intestate, the widow may relinquish her right to any or all the specific articles of property allowed to her by the preceding section, or in case the intestate shall not leave any or all of the articles specified, she shall be entitled to other property or the value of the same in money; and it shall be the duty of the administrator or court of probate, to allow the value of the articles specified by law to be set apart to the widow of any intestate, to be allowed her in money or other personal property, at her election.

Rights of widow to separate property.

894. SEC. 13. The right of a widow to her separate property, shall in no case be affected by her renouncing or failing to renounce the benefit of the provisions made for her in the will of her husband, or otherwise.

CHAPTER XXVII.

DISTRICT ATTORNEYS.

[Revised Statutes, Chapter XXIV.]

Duties.

895. SECTION 1. Every district attorney shall appear in behalf of the state, and the several counties of his district, in all indictments, suits and proceedings which may be pending in the district court in any county within his district wherein the state or the people thereof, or any county of his said district, may be a party; on the hearing of every writ of *habeas corpus* sued out by any person charged with or convicted of any public offense before the judge of his district; in any such indictment, action or proceeding which may be removed from the district court of any county within his district into the supreme court by

appeal or writ of error; in any such indictment, action, suit or proceeding which may be brought to the district court of any county in his district by change of venue from any other district; and where he may deem it advisable so to do, in the preliminary examination of persons charged with any offense before any justice of the peace or judge within his district. Nothing contained in this section shall be so construed as to prevent the county commissioners of any county from employing one or more attorneys to appear and prosecute or defend in behalf of the people of the state or such county, in any such indictment, action or proceeding.

Opinions in writing to be given county officers.

896. SEC. 2. The district attorney, upon request of any county officer of any county within his district, shall, without fee, give his opinion in writing upon all questions of law having reference to the duties of such officer which may be submitted; and shall file and preserve in his office a copy of all such opinions.

AN ACT IN REGARD TO DISTRICT ATTORNEYS.

[Session Laws, 1876.]

When court may appoint.

897. SECTION 1. If the district attorney be interested or shall have been employed as counsel in any case which it shall be his duty to prosecute or defend, the court having criminal jurisdiction may appoint some other person to prosecute or defend the cause.

If sick or absent.

898. SEC. 2. If he be sick or absent, such court shall appoint some person to discharge the duties of the office until the proper officer resume the discharge of his duties.

Powers of appointee.

899. SEC. 3. The person thus appointed shall possess the same power and receive the same fees as the proper officer would if he were present.

CHAPTER XXVIII.

DISTRICT COURTS.

AN ACT TO PROVIDE FOR AND REGULATE THE HOLDING OF THE DISTRICT COURTS IN THE SEVERAL JUDICIAL DISTRICTS IN THIS STATE, AND THE MANNER OF COMMENCING AND ADJOURNING THE SAME, AND RETURN OF PROCESS, AND PROVIDING FOR TRANSFER OF CAUSES THEREIN, AND FOR CONTINUING CAUSES, ACTIONS AND PROCEEDINGS THEREIN IN CASE OF ADJOURNMENT, AND TO REPEAL ALL OTHER ACTS IN RELATION THERETO.

Be it enacted by the General Assembly of the State of Colorado:

900. SECTION 1. Terms of the district court in the respective judicial districts in this state, shall, after the year 1876, be held in said districts, at the county seats of the several counties therein, as the county seats now are, or may hereafter be established, commencing on the days following in each and every year. That is to say:— Terms.

IN THE FIRST DISTRICT:

In the county of Boulder on the first Tuesday in February, and on the first Tuesday in October. First District.

In the county of Jefferson on the second Tuesday in April, and on the second Tuesday in November.

In the county of Gilpin on the first Tuesday in March, and on the first Tuesday in September.

In the county of Clear Creek on the first Tuesday in June, and on the first Tuesday in January.

In the county of Grand on the first Tuesday in July.

In the county of Summit on the fourth Tuesday in July.

IN THE SECOND DISTRICT:

In the county of Arapahoe on the first Tuesday in January, on the third Tuesday in April, and on the first Tuesday in September; *provided, however*, that for the year A. D. 1877, the January term in said Arapahoe county shall begin on the second Tuesday in January. Second District.

In the county of Elbert on the first Tuesday in March.

In the county of Weld on the third Tuesday in November.

In the county of Larimer on the fourth Tuesday in October.

In the county of Douglas on the second Tuesday in December.

IN THE THIRD DISTRICT:

Third District.

In the county of Las Animas on the first Monday in March, and on the first Monday in September.

In the county of Huerfano on the third Monday in January, and on the third Monday in August.

In the county of El Paso on the second Monday in February, and on the second Monday in October.

In the county of Fremont on the second Monday in April, and on the first Monday in November.

In the county of Bent on the third Monday in March, and on the third Monday in September.

In the county of Pueblo on the fourth Monday in April, and on the third Monday in December.

In the county of Park on the third Monday in June, and on the fourth Monday in November.

IN THE FOURTH DISTRICT:

Fourth District.

In the county of Costilla on the first Monday in March, and on the first Monday in September.

In the county of Conejos on the second Monday in March, and on the second Monday in September.

In the county of Rio Grande on the third Monday in March, and on the last Monday in September.

In the county of Saguache on the second Monday in November.

In the county of Lake on the second Monday in August.

In the county of Hinsdale on the third Monday in June, and on the fourth Monday in October.

In the county of Ouray on the first Monday in July.

In the county of San Juan on the second Wednesday after the first Monday in July, and on the second Monday in October.

In the county of La Plata on the fourth Monday in July.

In what manner causes pending to be proceeded with.

901. SEC. 2. All causes, issues and proceedings, civil or criminal, now pending in the district court of any of the counties above named, either upon change of venue or otherwise, in which there has been service of process, pub-

lication or appearance by the several parties to any former term, shall be deemed and held to be pending at the first term of such court as fixed by this act, and may be regularly proceeded with at such term, in the same manner as though pending at the next regular term of such court as fixed by law before the passage of this act.

Organization of courtsin counties where none have heretofore been held.

902. SEC. 3. In any county wherein no term of the district court has heretofore been held, wherein the court has not heretofore been organized, it shall be the duty of the judge of the district wherein such county is situate, without delay to appoint a clerk of the district court within and for such county, and the said clerk shall at once procure an office and a seal for said court, and such record books, furniture and supplies as may be necessary to the proper transaction of business, the expense of which shall be allowed as a claim against such county by the county commissioners, and be paid out of the county treasury as other bills against such county. The county commissioners shall also furnish a suitable room in which to hold said court from time to time.

Transfer of causes to district courts of counties heretofore attached to others for judicial purposes

903. SEC. 4. Whenever in any civil cause, now pending and undetermined in the district court of any county to which another county has heretofore been attached for judicial purposes, and if it shall be made to appear by the affidavit of any one of the parties thereto, or the affidavit of the agent, or attorney of any such party, to be filed with the papers in the cause, that the party defendant in the said cause, at the time of commencement of the suit, was a resident of the county so attached for judicial purposes, or that the cause of action arose within the county so attached to the other for judicial purposes, the said cause shall at once be transferred to the district court of the county so heretofore attached, and the clerk of the court wherein said cause is now pending, shall certify and transmit without delay all the papers in said cause to the clerk of the district court of the other county, together with certified copies of all orders therein, as in case of changes of venue in civil cases under existing laws, and his fees therefor shall abide the result of said suit; and any cause so transferred may be disposed of at the next term of said dis-

trict court in the county to which the same is so transferred; *provided*, that notice of the said transfer shall have been given in writing to the party or parties who did not unite in said affidavit, or to the attorney or attorneys of such party or parties, at least ten days before the first day of such term, and this fact shall be made to appear to the court in a proper manner by affidavit.

Transfer of criminal causes in counties heretofore attached to others for judicial purposes

904. SEC. 5. Any criminal cause or proceeding now pending and undetermined in the district court of any county to which another has been attached for judicial purposes, in which the defendant or defendants, at the time of the commencement of the prosecution, were liable to prosecution in the county so attached for judicial purposes, then the said cause shall be at once certified and sent by the clerk of the said court wherein the same is pending, to the clerk of the court in the county theretofore so attached, in the same manner as is provided by this act in civil cases; *provided*, that an affidavit of the defendant, or one of them, be first made and filed in the cause, showing the existence of the fact necessary to authorize the said change; and such cause when transmitted shall be deemed pending in the district court of the county to which it has been so transferred, at the term next after said change, and may be proceeded with in every way as though originally begun in said court; *provided*, the defendant or defendants not joining in said application for the transfer, and the district attorney, shall have notice of the said change at least ten days before the first day of said term to which it is so transferred.

At what term causes commenced prior to this act deemed to be pending, and when process returnable

905. SEC. 6. All causes, issues or proceedings, civil or criminal, instituted, pending or brought in the district court of any of the counties above named, in which process has been issued prior to the passage of this act, returnable to any term of court, as provided by existing laws, shall be deemed and held to be pending in such court, at the term in this act next succeeding the term to which such process shall have been made returnable, and such process shall be deemed and held returnable to the term of such court provided in this act next succeeding the term to which such process has been made returnable; *provided*, that in all

cases in which a term of court shall by this act be required to be held prior to the time at which process shall have been made returnable, according to existing laws or by order or proclamation of the judge of any of the judicial districts in this state, it shall be lawful for the plaintiff or complainants in the action in which such process shall have been issued, to sue out of the office of the clerk of the court in which such cause is pending, another process returnable to the term of the court fixed by this act, and thereafter the suit, action or proceeding shall proceed the same as if it had originally been brought to the term of such court fixed by this act: *And provided, further*, that in suits commenced by attachment when the writ shall have been made returnable prior to the time fixed by this act as aforesaid, a new writ of attachment may be issued returnable to the next term of the court out of which the same shall have been issued as fixed by this act, and may be levied on the property of defendants the same as though no other writ had been issued; but if the writ of attachment first issued shall have been levied upon the property of defendant or defendants prior to the taking effect of this act, every such levy shall (if otherwise regular and proper) be deemed and held to have become a good and valid lien on whatever interest defendant had in the property levied upon, the same as though the terms of court had not been changed; and if the said new writ shall not be served upon defendant or defendants named therein, such defendant or defendants shall be notified by publication to appear and answer at the next term of said court as fixed by this act, in the way and manner as provided by existing laws; and thereupon the court shall proceed in the same manner as in other suits of the same nature instituted to such term.

In what cases further process may be had.

Writ of attachment, levied prior to this act, held to be good and valid lien.

906. SEC. 7. At any regular term of the district court as provided by this act, within any county, such court may by an order to be entered of record, appoint a special term of the district court within and for such county, to be held at any future time, when by law the judge of such district court is not required to attend upon and hold a term of the district court in any other county within such district, and the court may in such order specify and direct whether a

Special Terms.

grand jury or petit jury, or both, or neither, shall be summoned to attend such term, and that such term shall be a term for the return of original or *mesne* process, to be issued in causes to be thereafter commenced therein, or that the same shall be for trial of causes and issues then pending only; in case a grand or petit jury is required to attend any such special term of court, the same shall be chosen and summoned as is now or may hereafter be provided by law in the case of the regular terms of such district courts. And any district judge may in vacation call a special term of court within and for any county in the manner aforesaid, by an order to be entered of record on the journal of the court within such county, under such general rules previously adopted therefor for the government of such matters in his district: *Provided*, public notice of the holding of such term be given at least thirty days before the commencement thereof, in such manner as may have been provided by such general rules.

Inability of judge to hold term.

907. SEC. 8. Whenever it shall happen that the judge shall be unable by reason of sickness, absence from the state or any other cause, to hold any term of the district court in his district, it shall be lawful for the governor to assign any other district judge to hold such term. And if no one of the other district judges is able to fill such appointment, then the governor shall appoint one of the judges of the supreme court to hold said term, which appointment in every instance shall be in writing. And all proceedings, orders, judgments and decrees, had, made and pronounced, at the term so held by the judge so especially appointed, shall have the same force and validity as if the said court were held by the judge elected in said district.

Adjournment of court in case judge fails to reach place appointed in proper time.

908. SEC. 9. Whenever it shall happen that the judge shall fail to reach the place appointed for holding any term of the district court by two o'clock in the afternoon of the first day of said term, it shall be the duty of the clerk of such court to adjourn said court until two o'clock of the day following; and in case the judge shall fail to arrive at the expiration of said adjournment, it shall be the duty of said clerk to adjourn the court until Monday of the ensuing week at ten o'clock a. m. of that day. And whenever

it shall happen during any term of court that the judge shall fail to appear to open court in pursuance of any adjournment made at that term, it shall be the duty of the clerk to adjourn the court until the hour of ten o'clock a. m. of the following day, and in case the judge does not appear at the hour of ten o'clock a. m. of that day, the clerk shall adjourn the court for the period of one week from that day to the hour of ten o'clock a. m., and shall immediately notify the governor of the failure of the judge to appear, and it shall be the duty of the governor to forthwith appoint in writing, one of the judges of the supreme court to hold the remainder of said term, unless the governor be satisfied that no real necessity exists requiring him so to do.

Discharge of jurors, etc., and continuance of proceedings to day of adjournment.

909. SEC. 10. In case of any adjournment by the clerk as provided for in the foregoing section, he shall discharge the jurors, witnesses and recognized persons in attendance, until the expiration of the adjournment; and all proceedings, actions, motions and orders, shall be deemed to be continued over until the day to which the court stands adjourned. And all jurors, witnesses and recognized persons shall be under the same obligation to appear at the court at such adjourned day, as they were to appear upon the day first appointed. And all proceedings, orders, judgments and decrees, had, made and pronounced by the court after any such adjournment, by whatever judge the court may be held, shall be in all respects valid and binding, the same as if no such adjournment had been necessitated.

In c se judge has been of counsel or is interested in any suit.

910. SEC. 11. Whenever the judge has been of counsel or is interested in any suit or proceeding pending in any district court, he may request the judge of some other district to sit and try such suit or proceeding, and in case the judge or judges so requested fail, neglect or refuse to sit and try such suit or proceeding, the judge is authorized to order a change of venue in such suit or proceeding, and shall send the same to the nearest county in some other district wherein no such disability exists on behalf of the judge to hear and try the same. Thereupon the clerk shall enter such order of record and make out certified copies of all orders made in the case, and at once transmit all the

papers in the suit and proceedings, to the clerk of the court to which the change is ordered, the same as changes of venue under existing laws.

Former acts repealed and proclamation of judges void.

911. SEC. 12. All acts and parts of acts repugnant to or inconsistent with this act are hereby repealed, and all orders and proclamations of any of the judges of the respective district courts in this state, appointing and fixing the terms of the district courts in any of the counties of this state in conflict with or inconsistent with the provisions of this act are hereby declared to be null and void after this act takes effect.

Emergency.

912. SEC. 13. Inasmuch as it is necessary to have the terms of the district court at once fixed by statute, and many of the provisions of the act being necessary for the proper protection of the rights of the people of this state, in the opinion of this general assembly it is an act contemplated by section 19 of article 5 of the constitution, which should take effect immediately upon its enactment; therefore this act shall take effect and be in force from and after its passage.

Approved, December 18, 1876.

Section one of this act was amended, and sections two and six were re-enacted by H. B. No. 177, approved, January 26, 1877.

AN ACT TO AUTHORIZE THE DISTRICT COURTS TO ALLOW FEES TO COUNSEL ASSIGNED TO PRISONERS IN CERTAIN CASES.

Be it enacted by the General Assembly of the State of Colorado:

Counsel assigned defendant who is unable to employ, to be allowed a fee by the court.

913. SECTION 1. That in all indictments for crimes or misdemeanors in any of the district courts of this state, where by reason of the inability of the defendant or defendants to employ counsel, the court may assign him or them counsel for his or their defense, it shall be the duty of the court so assigning counsel to allow him a fee, to be paid out of the county treasury of the county wherein such indictment may be found; *provided*, that but one fee shall be allowed to counsel in any one case.

914. SEC. 2. No fee allowed to counsel appointed as above provided for, shall exceed twenty dollars in any case

where the defendant is indicted for a misdemeanor. In all cases of indictment for the commission of a felony, the punishment for which is imprisonment in the penitentiary, the amount of the fee to be allowed to counsel so to be assigned, shall not exceed thirty dollars. In all cases of indictment for felony, the punishment for which is death, the amount of said fee shall not exceed fifty dollars.

Limit of fees to be allowed.

915. SEC. 3. In no case shall counsel be assigned to such defendant or defendants, unless the court be satisfied that he or they are unable, by reason of his or their poverty, to employ counsel, and no defendant possessed of any property sufficient to pay a reasonable attorney's fee, shall be entitled to any of the benefits or privileges of this act.

Counsel not to be assigned unless court is satisfied of poverty of defendant

916. SEC. 4. Whenever an attorney, appointed by any court to defend prisoners, shall have tried the case or shall have quashed any indictment therein, the clerk of said court shall give him a certified copy of the order of the court so assigning him as counsel, and the judge of said court shall indorse upon such order the sum to be allowed as a fee in the case, and upon the presentation of such order, with such indorsement, the county commissioners of the county shall order a warrant to be drawn on the county treasury in payment of such fee.

In what manner fee allowed is certified to county commissioners.

Approved, March 7, 1877.

CHAPTER XXIX.

DIVORCE AND ALIMONY.

[Revised Statutes, Chapter XXVI.]

917. SECTION 1. In any case in which a marriage has been or hereafter may be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided, that either party at the time of the marriage was and continued to be impotent naturally, or that he or she had a wife or husband living at the time of such marrriage, or that either party has committed adultery subsequent to the marriage, or has wilfully de-

Causes for divorce; not to affect legitimacy of children, except marriage declared void.

serted and absented himself or herself from the husband or wife, without any reasonable cause, for the space of one year, or that a husband has wilfully deserted and absented himself from his wife and departed from this state, without any intention of returning, or that either party has been guilty of habitual drunkenness for the space of two years, or been guilty of extreme cruelty, or been convicted of felony, or other infamous crime, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract, but no such divorce shall in anywise affect the legitimacy of the children of such marriage, except in case where the marriage shall be declared void on the ground of a prior marriage.

District court to have jurisdiction

918. SEC. 2. The district court sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony, by this chapter allowed; and the like process, practice and proceedings shall be had, as are usually had in other cases in chancery, except as is hereafter provided, and except that the answer of the defendant need not be under oath.

What residence required to entitle complainant to sue.

919. SEC. 3. No person shall be entitled to a divorce, in pursuance of the provisions of this chapter, who has not resided in this state one whole year previous to filing his or her bill, unless the offense or injury complained of was committed within this state or whilst one or both of the parties reside in this state.

No divorce granted in case of collusion, or adultery committed by both parties.

920. SEC. 4. If it shall appear that the injury complained of was occasioned by collusion of the parties, for the purpose of obtaining a divorce, or that both parties have been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.

Trial by jury if bill denied; if confessed, how proof to be taken

921. SEC. 5. In all cases for a divorce, where the defendant shall appear and deny the charges in the complainant's bill alleged, the same shall be tried by a jury; but if the bill is taken for confessed, the court may proceed to a hearing of the cause by examination of witnesses in open court, or may refer the cause to the master in chancery to take proofs, but any marriage which may have been celebrated in any foreign state or country, may be found by the acknowledgment of the parties, their cohabitation, or other circumstantial evidence.

922. SEC. 6. When a divorce shall be decreed, it shall and may be lawful for the court to make such order touching the alimony and maintenance of the wife, the care and custody of the children, or any of them, as from the circumstances of the parties and the nature of the case, shall be fit, reasonable and just; and in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance, or may enforce the payment of such alimony and maintenance, in any other manner consistent with the rules and practice of the court, and may also grant alimony *pendente lite*; and the court may on application from time to time, make such alteration in the allowance of alimony and maintenance as shall appear reasonable and proper.

Alimony and maintenance of wife; care and custody of children.

923. SEC. 7. Any woman suing for a divorce, who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs, and in such cases, no fees shall be charged by the officers of the court.

When woman to prosecute without costs.

924. SEC. 8. The same rule of proceeding shall be had as in other cases in chancery, and upon the hearing, the court shall have the power to decree a dissolution of the bonds of matrimony, if the causes mentioned in this chapter are proven to exist.

Rules of proceeding same as in other chancery cases.

AN ACT TO LEGALIZE THE PROCEEDINGS OF PROBATE COURTS OF CERTAIN COUNTIES HERETOFORE HAD IN DIVORCE CASES.

Be it enacted by the General Assembly of the State of Colorado:

THAT, WHEREAS, the probate courts of certain counties have heretofore exercised jurisdiction in divorce cases, and various parties have obtained decrees of said courts granting divorces, with the belief that the courts possessed jurisdiction in relation to said matters;

AND WHEREAS, doubts exist as to the validity of said proceedings, and as to the right of said courts to exercise jurisdiction in the said matters;

THEREFORE, be it enacted, as aforesaid:

925. SECTION 1. That all proceedings of any probate

Proceedings heretofore had in probate courts, legalized.

courts, the jurisdiction of which is or may be questioned as aforesaid, heretofore had in any case so far as the same or any part thereof relate to the matters aforesaid, and to the jurisdiction of the courts therein, be and the same are in all respects legalized.

Approved, March 1, 1877.

CHAPTER XXX.

ELECTIONS.

AN ACT REGULATING ELECTIONS, AND REPEALING ALL TERRITORIAL ACTS UPON THE SUBJECT.

Be it enacted by the General Assembly of the State of Colorado:

QUALIFICATIONS OF ELECTORS.

Qualifications of electors

926. SECTION 1. Every male person over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections:

First—He shall be a citizen of the United States, or not being a citizen of the United States, he shall have declared his intention, according to law, to become such citizen, not less than four months before he offers to vote.

Second—He shall have resided in the state six months immediately preceding the election at which he offers to vote, in the county thirty days, and in the ward or precinct ten days; *provided*, that no person shall be denied the right to vote at any school district election, nor to hold any school district office on account of sex.

Same.

927. SEC. 2. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election, nor shall any person while confined in any public prison be entitled to vote, but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom by pardon, or by having served out his full term of imprisonment, shall be invested with all the rights of citizenship, except as provided in the constitution.

Residence gained or lost.

928. SEC. 3. For the purposes of voting and eligibility to office, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason

of his absence, while in the civil or military service of the state, or of the United States, nor while a student at any institution of learning, nor while kept at public expense in any poor-house or other asylum, nor while confined in public prison.

929. SEC. 4. Every qualified elector shall be eligible to hold any office of this state for which he is an elector, except as otherwise provided by the constitution. Eligibility to hold office.

THE TIME FOR HOLDING ELECTIONS FOR STATE, DISTRICT AND COUNTY OFFICERS, MEMBERS OF CONGRESS AND PRESIDENTIAL ELECTORS.

930. SEC. 5. A general election shall be held in the several wards and precincts in this state on the first Tuesday of October, A. D. 1877, 1878 and 1879, and on the Tuesday succeeding the first Monday in November, A. D. 1880, and on the Tuesday succeeding the first Monday of November in every year thereafter. Time of general election.

931. SEC. 6. At the general election, A. D. 1877, and every alternate year thereafter, there shall be elected in every county of the state the following county officers, to wit: One county clerk, who shall be *ex officio* recorder of deeds and clerk of the board of county commissioners; one sheriff, one coroner, one treasurer, who shall be collector of taxes; one county superintendent of schools, one county surveyor, and one county assessor. There shall also be elected in every county of the state, at the general election, A. D. 1877, and every third year thereafter, one county judge. What county officers elected.

932. SEC. 7. At the general election, A. D. 1878, and every alternate year thereafter, there shall be elected the following state officers, to wit: One governor, one lieutenant governor, one secretary of state, one state treasurer, one auditor of state, one superintendent of public instruction, and two regents of the university; and in each representative district of the state, such members of the house of representatives as they may severally be entitled to. State senators shall be elected in every senatorial district, at the general election in the year when the term of office of senator shall expire in such district respectively; also, on the first Tuesday succeeding the first Monday of No- What state officers shall be elected. State representatives. Senators.

Representative in congress.

vember, A. D. 1878, and every alternate year thereafter, there shall be elected the number of representatives in congress to which the state may be entitled.

Judge supreme court and district attorney.

933. SEC. 8. At the general election, A. D. 1879, and every third year thereafter, there shall be elected one judge of the supreme court, and in each judicial district of the state, one district attorney. At the general election,

Presidential electors

A. D. 1880, and every fourth year thereafter, there shall be elected such a number of electors, of president and vice president of the United States, as the state may be entitled to in the electoral college, and at the general election, in 1882, and every sixth year thereafter, there

District judges.

shall be elected in each judicial district one judge of the district court.

934. SEC. 9. At the general election, A. D. 1877, and annually thereafter, there shall be elected in each county

County commissioners.

of the state, one county commissioner, whose term of office shall be three years, and in each justice's precinct, except wards in incorporated cities, there shall be elected at the general election, A. D. 1877, and annually there-

Justices and constables.

after, one justice of the peace, and one constable, whose terms of office shall be two years; and all other officers, not herein specified, that now are, or hereafter may be created, shall, unless otherwise provided, be elected on the day of the general election.

VACANCY IN OFFICE AND SPECIAL ELECTIONS.

Governor to fill vacancies.

935. SEC. 10. All vacancies in any state or county office, and in the supreme or district courts, unless otherwise provided for by law, shall be filled by appointment by the governor, until the next general election after such vacancy occurs, when such vacancy shall be filled by election, and the district judge shall fill all vacancies in the

District attorney appointed by judge.

office of district attorney in his district, by appointment, until the next general election.

Term of office commence

936. SEC. 11. The regular term of office of all state, district and county officers, and of the judges of the supreme court, shall commence on the second Tuesday of January next after their election, except as otherwise provided by law.

937. SEC. 12. The regular term of office of members of the general assembly shall commence on the first Wednesday of December next after their election. General assembly.

938. SEC. 13. Any of the said officers that may be elected or appointed to fill vacancies may qualify and enter upon the duties of their office immediately thereafter, and if elected, they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified, but if appointed, they shall hold the same only until their successors are elected and qualified. Qualification of officers.

939. SEC. 14. Whenever a vacancy shall occur in the office of senator or member of the house of representatives in any county, or counties, or district, in this state, entitled by law to such senator or representative, the governor shall, upon satisfactory information thereof, and as soon as the necessity is apparent, issue a writ or writs of election to the sheriff or sheriffs of said county or counties, entitled by law to such senator or representative, as aforesaid, directing him to give notice of a special election within such county or counties on a day specified in such writ or writs, for the purpose of filling such vacancy; and the sheriff shall proceed to give notice of the time and place of holding such election, as in other cases, and such election shall be held and conducted, and the returns thereof be made to the county clerks in the same manner and within the time specified in this act. Special elections

940. SEC. 15. Special elections shall be conducted, and the results thereof canvassed, and certified in all respects as near as practicable in like manner as general elections, except as otherwise provided; but special elec- elections shall not be held, unless when required by public good, and in no case within ninety days next preceding a general election. Manner of conducting.

941. SEC. 16. All vacancies in any county or precinct office, of any of the several counties of the state, except that of the county commissioner, shall be filled by appointment by the county commissioners of the county in which the vacancy occurs, until the next general election, when such vacancy shall be filled by election subject to the pro- Vacancies in county and precinct offices.

visions of section twenty-nine, article six of the constitution.

County commissioners shall be resident of county.

942. SEC. 17. Whenever the governor appoints a county commissioner to fill a vacancy in any county, he shall appoint a person who is a resident of the county and of the commissioner district of the county in which the vacancy exists.

Special election for member of congress.

943. SEC. 18. Whenever any vacancy shall happen in the office of representative in congress from this state, it shall be the duty of the governor to appoint a day to hold a special election to fill such vacancy, and cause notice of such election to be given as required in section twenty of this act.

CALLING ELECTIONS.

Manner of calling general election.

944. SEC. 19. The secretary of state shall at least thirty days previous to any general election, at which officers of the executive department, regents of the University, members of the general assembly, judges of the supreme and district courts, district attorneys, representatives in congress, and presidential electors, are to be elected for a full term, make out and cause to be delivered, or transmitted by registered letter, to the county clerk of each county a notice in writing, stating that at the next general election the beforementioned officers are to be elected, or so many of such officers as are then to be chosen; when members of the general assembly are to be elected, and are included in said notice, it shall specify the number of the district, and the name of the member or members, whose terms of office will expire.

Secretary of state shall give notice.

945. SEC. 20. Whenever there is a vacancy, in any of the offices mentioned in the preceding section, which is by law, to be filled at the general election, at which county officers are elected, the secretary of state, shall, at least thirty days previous to said election, give notice in writing as provided for in the preceding section, and said notice shall specify the office in which a vacancy exists; the cause of such vacancy; the name of the officer in whose office it has occurred, and the time when his term of office will expire.

946. SEC. 21. The county clerk shall give notice in writing of each general or special election, in which shall be stated the time when it will be held, and the officers then to be elected, by causing the same to be published in a newspaper having general circulation in the county, and sending a copy of such notice by mail to the judges of election in each precinct, to be posted at the place of voting, at least fifteen days before such time. County clerk shall give notice; how.

COUNTY COMMISSIONERS' DUTIES.

947. SEC. 22. The county commissioners of the several counties in this state are hereby authorized to divide their respective counties into as many election precincts, for all general and special elections, as they may think expedient for the convenience of the voters of said county; and shall designate the house or place in each precinct or ward at which elections are to be holden, and the precincts and places of holding elections so established shall so remain until changed by the board of county commissioners; *provided*, that it shall be the duty of the county commissioners, at any time, to change any place of holding elections, upon a petition of a majority of the voters residing within said precinct; *and provided further*, that the precincts and wards established, and the places designated in which to hold elections, at the time of the taking effect of this act, shall so remain until changed. To divide county into precincts. Designate time and place of holding elections. Shall change place upon petition.

948. SEC. 23. The said boards of county commissioners respectively, at the July session of such board, shall appoint three capable and discreet persons, representing at least two political parties, if practicable, possessing the qualifications of electors, to act as judges of the election in each election precinct, at all general and special elections until their successors are appointed; and the clerk of said board shall make out and deliver, by mail or other safe conveyance, without expense to the county, to each one of the judges so appointed, a notice in writing of their appointment. Shall appoint judges.

949. SEC. 24. The county commissioners of each county shall provide a ballot box at the expense of the county, for each place of voting, to be kept by one of the Shall furnish ballot box.

judges and delivered over to the successors of such judge or board, each of which said ballot boxes shall be furnished with a sufficient lock and key. The key shall be kept in charge by a judge of the election, in each precinct or ward, other than the one who has in charge the ballot box. If the judge thus having possession of the ballot box, die or remove from the precinct meantime, any justice of the peace or judge of election of the precinct, other than the custodian of the key, may be the keeper of the ballot box until the next general election.

Key in charge of judge.

CONDUCT OF ELECTIONS.

Judges to appoint clerks.

950. SEC. 25. The said judges of election shall choose two persons, having similar qualifications with themselves, to act as clerks of the election; and the said clerks of election may continue to act as such during the pleasure of the judges of the election.

Vacancies; how filled.

951. SEC. 26. If any person appointed to act as a judge of the election, as aforesaid, shall neglect or refuse to be sworn or affirmed, or to act in such capacity, the place of such person shall be filled by the votes of such qualified voters residing within the precinct, as may then be present at the place of election, and the person or persons so elected to fill such vacancy or vacancies, shall be, and are hereby vested with the same power as if appointed by the board of county commissioners.

Oath of judges and clerks.

952. SEC. 27. Previous to any votes being taken, the judges and clerks of the election shall severally take an oath or affirmation, in the following form, to-wit: I, A. B., do solemnly swear (or affirm,) that I will perform the duties of judge (or clerk, as the case may be,) according to law, and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same, and that I will not try to ascertain, nor will I disclose how any elector voted, if, in the discharge of my duties as judge (or clerk, as the case may be,) knowledge should come to me as to how any elector shall have voted, unless called upon to disclose the same before some court of justice.

953. SEC. 28. In case there shall be no judge, justice

of the peace, or other person qualified by law to administer an oath, present at the opening of the election, to administer the oath mentioned in the preceding section, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oaths or affirmations to each other, and to the clerks of the election, and the person administering such oaths or affirmations, shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books. Judges may administer.

954. SEC. 29. Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after having assembled at or as near as practicable to such place, and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election. May adjourn to other place; when.

955. SEC 30. Upon adjourning any election, as provided in the preceding section, the judges shall cause proclamation thereof to be made, and shall station a constable, or some other proper person, at the place where the adjournment was made from, to notify all elector [electors] arriving at such place of adjournment and the place to which it was made. Proceedings in case of adjournment.

956. SEC. 31. At all elections held under this act, the polls shall be opened at eight o'clock in the morning and continue open until seven o'clock in the afternoon of the same day, at which time the polls shall be closed. *Provided, however*, that if a full board of judges shall not attend at the hour of eight in the morning, and it shall be necessary for the electors present to appoint judges to conduct the election as hereinbefore prescribed, the election may, in that case, commence at any hour before the time for closing the polls shall arrive, as the case may require. Upon the opening of the polls, proclamation shall be made by one of the clerks; and thirty minutes before the closing of the polls proclamation shall be made in like manner that the polls will close in thirty minutes. Hour of opening and closing polls. Proclamation to be made.

957. SEC. 32. Every elector shall vote by ballot, which shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list Manner of voting.

of voters opposite the name of the voter who presents the ballot. Each person offering to vote shall deliver his ballot to one of the judges in the presence of the board. The ballot shall be a paper ticket, which shall contain written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person so named by him is intended to be voted for.

All names on one ballot.

958. SEC. 33. The names of all persons voted for by any elector, at any general or special election, shall be on one ballot.

Shall not vote but once

959. SEC. 34. If any elector shall vote more than once or having voted once, shall offer to vote again, at any election, or shall offer to deposit in the ballot box, at any election, more than one ballot, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding sixty days.

Penalty.

Ballot to be given judge.

960. SEC. 35. Each elector shall in full view deliver to one of the judges of election a single ballot.

Duty of judge upon receipt of ballot.

961. SEC. 36. The judge to whom any ticket may be delivered, shall, upon the receipt thereof, pronounce in an audible voice the name of the elector, and if no objection shall be made to him, and the judges are satisfied that he is a legal elector and is duly registered, the ballot shall be numbered and immediately be put in the ballot box without inspecting the names written or printed thereon, and the clerks of the election shall enter the name of the elector and number in the poll books.

Judge in determining residence, how to be governed

962. SEC. 37. The judges of election in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

First—That place shall be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

Second—A person shall not be considered or held to have lost his residence, who shall leave his home and go into another state, territory or county of this state, for temporary purposes merely, with an intention of returning.

Third—A person shall not be considered or held to have gained a residence in this state, or in any county in this state, when retaining his home or domicil elsewhere.

Fourth—If a person remove to any other state, or to any of the territories, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in this state.

Fifth—If a person remove from one county, precinct or ward in this state to any other county, precinct or ward in this state, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the county, precinct or ward, from which he removed.

963. SEC. 38. If a person offering to vote be challenged as unqualified, by one of the judges of election, or by any elector, one of the judges shall tender to him the following oath or affirmation: "You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence and qualification of an elector at this election." Challenge. Oath.

First—If the person be challenged as unqualified, on the ground that he is not a citizen, and will not exhibit his papers pertaining to his naturalization, the judges, or one of them, shall put the following questions: first—are you a citizen of the United States? second—are you a native or naturalized citizen; and, if neither, have you declared your intention to become a citizen, conformably to the laws of the United States, on the subject of naturalization, at least four months previous to to-day? third—have you become a citizen of the United States by reason of the naturalization of your parents, or one of them? fourth—where were your parents, or one of them, naturalized? If the person offering to vote claims to be a naturalized citizen of the United States, or that he has four months previous to the election declared his intention to become such, he shall state, under oath, where and in what courts he was naturalized. Naturalization.

Second—If the person be challenged as unqualified, on the ground that he has not resided in this state for six months immediately preceding the election, the judges or Residence.

one of them shall put the following questions: first—have you resided in this state for six months immediately preceding this election, and during that time, have you retained a home or domicil elsewhere? second—have you been absent from this state within the six months immediately preceding this election? third—if so, when you left, was it for a temporary purpose, with the design of returning, or did you intend remaining away? fourth—did you, while absent, look upon, and regard this state as your home? fifth—did you, while absent, vote in any state or territory?

Same.

Third—If the person be challenged on the ground that he has not resided in the county thirty days, or in the precinct or ward ten days, one of the judges shall question him as to his residence in the county, precinct, or ward in a manner similar to the before-mentioned method of questioning a person as to his residence in this state.

Age.

Fourth—If the person be challenged as unqualified, on the ground that he is not twenty-one years of age, the judges, or one of them, shall put the following question: Are you twenty-one years of age, to the best of your knowledge and belief? The judges of the election, or one of them, shall put all such other questions to the person challenged under the respective heads aforesaid, as may be necessary to test his qualifications as an elector at that election.

Refusal to answer.

964. SEC. 39. If the person challenged as aforesaid shall refuse to answer fully any question which shall be put to him as aforesaid, the judges shall reject his vote.

Judge to tender oath to person challenged.

965. SEC. 40. If the challenge be not withdrawn, after the person offering to vote shall have answered the questions put to him as aforesaid, one of the judges shall tender to him the following oath: "You do solemnly swear (or affirm) that you are a citizen of the United States (or declared your intention of becoming such at least four months previous to this election), of the age of twenty-one years; that you have been a resident of this state for six months next preceding this election, and have not retained a home or domicil elsewhere; that you have been for the last thirty days, and now are, a resident of this county; that you have

been for the last ten days, and now are, a resident of this precinct, (or ward as the case may be,) and that you have not voted at this election."

Refusal to take oath.

966. SEC. 41. If any person shall refuse to take the oath or affirmation so tendered, his vote shall be rejected; *provided*, that after such oath shall have been taken, the judges may nevertheless refuse to permit such person to vote if they shall be satisfied that he is not a legal voter.

Judges may refuse vote after oath is taken.

Clerk to write "sworn" following name.

967. SEC. 42. Whenever any person's vote shall be received, after having taken the oath or affirmation prescribed in section forty (40) of this act, it shall be the duty of the clerks of the election to write on the poll books at the end of the person's name, "sworn."

Judge shall challenge; when.

968. SEC. 43. It shall be the duty of any judge of election to challenge any person offering to vote whom he shall believe not to be qualified as an elector.

Ballot box to be examined and locked.

969. SEC. 44. It shall be the duty of the judges of election immediately before proclamation is made of the opening of the polls, to open the ballot box in the presence of the people there assembled, and turn it up side down, so as to empty it of everything that may be in it, and then lock it securely; and it shall not be re-opened until, for the purpose of counting the ballots therein, at the close of the election.

Constables may be appointed to preserve order.

970. SEC. 45. For the preservation of order, as well as the securing of the judges and clerks of the election from insult and abuse, it shall be the duty of any constable or constables residing within the precinct, who shall be designated for the purpose by the judges of the election, to attend to all elections within his precinct, and the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the elections and until the votes are canvassed.

Compensation of constables.

971. SEC. 46. Constables or special constables, appointed or requested by the judges of election to preserve peace at the polls, shall each receive two dollars and a half per day for their services, payable out of the county treasury.

972. SEC. 47. Each clerk of the election shall keep a poll list which shall contain one column headed, "Names of

Poll list.

voters," and one column headed, "Number on ballot." The name and the number on the ballot of each elector voting shall be entered by each clerk in regular succession under the said headings in his poll list.

Closing of polls.

973. SEC. 48. The polls at any election shall not be closed, after once being opened, until they are finally closed in the evening.

Counting of vote.

974. SEC. 49. As soon as the polls at any election shall have finally closed, the judges shall immediately open the ballot box and proceed to canvass the votes polled. They shall first count the number of ballots in the box; if the ballots shall be found to exceed the number of names entered on each of the poll lists, the numbers upon the ballots shall be examined without opening the ballots, and if it be found those in excess of the total number on the poll lists be not numbered, they shall be destroyed; if it be found that there is more than one ballot having the same number, the ballots having the same numbers shall be replaced in the box and shaken up, and one of the judges shall publicly draw out and destroy all but one of said ballots. When the ballots and the poll lists agree, or as above provided have been made to agree, the board shall proceed to count and estimate and publish the votes.

Tally lists.

975. SEC. 50. As the judges of election shall open and read the tickets, each clerk shall, upon tally lists prepared for the purpose, carefully mark down the votes each candidate shall have received in separate lines, with the name of such candidate at the end of the line, and the office it is designed by the voters such candidate shall fill; but if on such canvassing two or more tickets shall be found deceitfully folded together, such tickets shall be rejected.

Judges certificate.

976. SEC. 51. As soon as all the votes shall have been read off and counted, the judges of election shall make out a certificate under their hands, and attested by the clerks, stating the number of votes each candidate received, designating the office for which such person received such vote or votes, and the number he did receive, the number being expressed in words at full length, and in numerical

figures; such entry to be made as nearly as circumstance will admit, in the following form, to wit:

Form.

At an election held at the house of ——— ———, in ——— precinct (or ward,) in the county of ———, and state of Colorado, on the —— day of ———, in the year of our Lord, one thousand eight hundred and ———, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

Whole number of votes cast were ———.

A. B. had seventy-two (72) votes for governor;

C. D. had seventy-one (71) votes for governor;

E. F. had seventy-two (72) votes for lieutenant governor;

G. H. had sixty-nine (69) votes for lieutenant governor.

J. K. had sixty-eight (68) votes for representative in congress;

L. M. had seventy (70) votes for representative in congress;

N. O. had seventy-two (72) votes for representative;

P. Q. had seventy-one (71) votes for representative;

R. S. had eighty-four (84) votes for sheriff.

T. W. had sixty (60) votes for sheriff.

And in the same manner for any other persons voted for.

Certified by us:

A—— B———
C—— D——— } Judges of the
E—— F——— Election.

Attest:

G—— H———
I—— J——— } Clerks of Election.

List, tally and certificate to be sent to county clerk.

And the said certificate, together with one of the lists of voters, and one of the tally papers, shall then be enclosed and sealed up, under cover, and directed to the clerk of the county in which such election is held, and the packet thus sealed shall be sent by registered letter, when practicable, otherwise, it shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot agree otherwise, within six days of the closing of the

Messenger determined by lot.

polls. And if any judge or clerk of an election, after having been deputed by the judges of the election at which he served as judge or clerk, to carry the poll book of such election to the clerk of the county, shall fail or neglect to deliver such poll book to the said clerk, within the time prescribed by law, safe, with the seal unbroken, he shall for every offense forfeit and pay the sum of five hundred dollars, for the use of the county, to be recovered in the name of the commissioners of the county, by an action of debt in any court of competent jurisdiction; *provided*, that informality in the delivering of the poll books, as directed in this section, shall not invalidate the vote of any precinct when said poll books shall have been delivered previous to the canvassing of the votes of such election by the county board of canvassers.

Failure to deliver.

Penalty.

Failure to deliver not to invalidate vote of precinct.

977. SEC. 52. If any judge or the judges of any election shall wilfully and maliciously refuse to receive the ballot of any qualified elector, who shall take or offer to take the oath prescribed by this act, in such case every judge so refusing or neglecting to receive the vote or ballot, when the same shall be presented, shall be liable to be indicted, and on conviction thereof, shall be fined five hundred dollars, and imprisoned not exceeding thirty days; and for every refusal or neglect to receive such vote, the party aggrieved may have an action on the case against the said judge or judges; the damages in such case shall not exceed the sum of five hundred dollars.

Refusal of judge to receive vote.

Penalty.

CANVASS OF THE VOTE.

978. SEC. 53. On the tenth day after the close of the election, or sooner, if all the returns be received, the clerk of the county, taking to his assistance two justices of the peace of his county, one at least of whom shall belong to a different political party than himself, if any such there be in the county, shall proceed to open the said returns, and make abstracts of the votes in the following manner: The abstract of votes for electors for president and vice president of the United States shall be on one sheet, and the abstract of votes for representative in congress shall be on another sheet, and the abstract of votes for regents of the

Canvass by county clerk; how made.

university shall be on another sheet, and the votes for officers of the executive department shall be on another sheet, and the abstract of votes for senators shall be on another sheet, and the abstract of votes for representatives shall be on another sheet, and the abstract of votes for judges of the supreme court shall be on another sheet, and the abstract of votes for judges of the district court, and district attorneys shall be on another sheet; and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of the said clerk of the county immediately to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers, respectively, and cause such certificate to be delivered to the person entitled to it. If any two or more persons have an equal number of votes for the same county or precinct office, and a higher number than any other person, the county clerk and his assistants aforesaid shall immediately determine by lot which of the two candidates shall be elected.

Clerk to give certificate of election.

979. SEC. 54. The clerk of the county immediately after making out abstracts of votes given in his county, shall make a copy of such abstract and deliver or transmit the same in a registered package by mail to the office of the secretary of state; the original abstracts he shall file and record in a book in his office to be kept for that purpose. He shall also certify to the abstracts and copies and affix thereto the county seal, and the said clerk shall respectively endorse on the back of the envelope in which the said certified copies are enclosed, "certified copy of the abstract of votes cast for governor, etc., members of the general assembly, etc., (as the case may be,) cast at the regular election in ——— county, ———, 18—.

Clerk to transmit abstract to secretary of state.

Form of indorsement upon envelope containing returns.

980. SEC. 55. Whenever it shall so happen that the county clerk shall die, be absent, or from any causality be prevented from opening the returns of votes at any election, it shall be lawful for his deputy to discharge the duties required of such clerk by law; which deputy shall be appointed by the majority of the county commissioners when said clerk has failed to appoint a deputy.

Deputy clerk to act; when.

981. SEC. 56. The abstract of votes cast in each county

Abstract of vote for executive officers; how transmitted.

for the officers of the executive department shall be sealed up by the county clerks of said counties, and delivered or transmitted in a registered package by mail to the secretary of state, directed to the speaker of the house of representatives. Upon the organization of the house the secretary of state shall deliver to the speaker of the house all of the returns for officers of the executive department that he shall have received, and upon the receipt of the the same by the speaker of the house of representatives, he shall, before proceeding to other business, open and publish the same in the presence of a majority of the members of both houses of the general assembly, who shall for that purpose assemble in the hall of the house of representatives. The person having the highest number of votes for either of said offices shall be declared duly elected by the presiding officer of the joint assembly, but if two or more have an equal and the highest number of votes for the same office, one of them shall be chosen thereto by the two houses on joint ballot.

How directed.

Secretary of state to deliver to speaker of house.

Speaker to open and publish.

Board of state canvassers.

982. SEC. 57. The governor, secretary of state, auditor of state, treasurer of state, and attorney general or any three of them, shall constitute the board of state canvassers, and shall canvass the abstracts of votes cast in the different counties of the state, for electors of president and vice president, for representative in congress, for regents of the university, for judges of the supreme and district courts, for district attorneys, and for senators and representatives.

Secretary to send messenger for returns; when.

983. SEC. 58. If from any county no such abstract of votes shall have been received within the twenty-five days next after any election, by the secretary of state, he shall dispatch a special messenger to obtain a copy of the same from the county clerk of such county, and such county clerk shall immediately on demand of such messenger, make out and deliver to him the copy required; which copy of the abstract of votes the messenger shall deliver to the secretary of state without delay. The said messenger shall receive as compensation for his services three dollars per day, and fifteen cents for each mile traveled in going to and returning from the county seat of said

Compensation of messenger.

county, by the usual route, to be paid out of the state treasury.

Time of meeting of state board.

984. SEC. 59. For the purpose of canvassing the result of elections, the state board of canvassers shall meet at the office of the secretary of state at ten o'clock of the forenoon of the twenty-fifth day after any election for any of the officers mentioned in section fifty-three (53) of this act, if it be not on Sunday; if it be on Sunday then they shall meet on the twenty-sixth day, when they shall, if the returns from all the counties of the state be in the possession of the secretary of state, proceed to canvass the votes; if the returns are not all in they shall adjourn from time to time, as they deem proper, to wait the receipt of all the returns; *provided, however*, that on the last Wednesday of December, next after the election, they shall canvass the votes whether all the returns be received or not; *and, also, provided*, that on the year upon which there is elected electors of president and vice president, the state board of canvassers shall meet at the secretary of state's office on the last secular day of November, in the year of the election and proceed to canvass the votes cast for said electors.

If returns not in, may adjourn.

Final canvass.

Time of canvass for presidential electors.

Canvass by state board.

985. SEC. 60. The state board of canvassers, when met in accordance with the law, and a quorum (three) being present, shall proceed to examine and make statement of the whole number of votes given at any such election for all of the officers mentioned in section fifty-three (53) of this act, that shall have been voted for in said election; which statements shall show the names of the persons to whom such votes shall have been given for either of the said offices, and the whole number given to each, distinguishing the several districts and counties in which they were given; they shall certify such statements to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been, by the greatest number of votes, duly elected to such offices, or either of them, and shall endorse and subscribe on such statements a certificate of their determination, and deliver them to the secretary of state.

986. SEC. 61. If any two or more persons have an

In case of tie, election decided by lot.

equal, and the highest number of votes for member of either house of the general assembly; for judge of the supreme or district courts; for district attorney; or for regent of the university; or electors of president and vice president; the state canvassers shall proceed to determine, by lot, which of the candidates shall be declared elected. Reasonable notice shall be given to such candidates, of the time when such election will be so determined.

Secretary to record statement.

987. SEC. 62. The secretary of state shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination, as made by the board of state canvassers, and shall, without delay, make out and transmit to each of the persons thereby declared to be elected, a certificate of his election, certified by him, under his seal of office; and he shall also forthwith cause a copy of such certified statement and determination to be published in a newspaper published at the seat of government.

To transmit certificate of election.

To publish statement.

Secretary to place list of members elect before each house.

988. SEC. 63. Upon the day fixed by law for the assembling of the general assembly, the secretary of state shall lay before each house a list of the members elected thereto, with the districts they represent, in accordance with the returns in his office.

Secretary to give certificate to electors.

989. SEC. 64. The secretary of state shall prepare lists of the names of the electors of president and vice president of the United States, elected at any election, procure thereto the signature of the governor, affix the seal of the state to the same, and deliver one of such certificates thus signed to each of said electors, on or before the first Wednesday in December, next after such election.

Time of meeting of presidential electors.

990. SEC. 65. The electors of president and vice president of the United States shall convene at the capital of the state, on the first Wednesday of December, next after their election, at the hour of twelve o'clock at noon of that day; and if there shall be any vacancy in the office of electors, occasioned by death, refusal to act, neglect to attend, or other cause, the elector or electors present shall immediately proceed to fill such vacancy in the electoral college; and when the vacancies shall have been filled as above provided, they shall proceed to perform the duties

Vacancy; how filled.

required of such electors by the constitution and laws of the United States, and vote for president and vice president by open ballot.

Compensation of electors.

991. SEC. 66. Every elector of this state, for the election of president and vice president of the United States, hereafter elected, who shall attend and give his vote for those officers at the time and place appointed by law, shall be entitled to receive the sum of five dollars per day for each day's attendance at such election, and fifteen cents per mile for each mile he shall travel, in going to and returning from the place where the electors shall meet, by the most usual traveled route, to be paid out of the general contingent fund, and the auditor of state shall audit the amount and draw his warrant for the same. There shall be an election held in this state for the election of such electors, at the times appointed by any law of the congress or the constitution of the United States for such election, and when such election shall be special, the same shall be called, held, and the votes polled, canvassed in all respects as at a general election, and the duties of the electors so elected shall be the same as prescribed by law for electors elected at a general election.

Time of election of electors.

Special election.

Errors in name of candidate.

992. SEC. 67. Whenever the judges of election, in any precinct or ward, discover in the canvassing of votes that the name of any candidate voted for be mis-spelled, or the initial letters of his christain name or names be transposed or omitted in part, or altogether, on the ballot, the vote or votes for such candidate shall be counted for him, if the intention of the elector to vote for him be apparent; and whenever the board of county canvassers, or of state canvassers, or the speaker of the house of representatives, when authorized by law, to canvass votes or returns, shall find the returns from any precinct, ward, county or district, (as the case may be,) do not strictly conform to the requirements of law, in the making, certifying and returning the same, the votes polled in such precinct, ward, county or district, shall, nevertheless, be canvassed and counted, if such returns shall be sufficiently explicit to enable such boards, or any person or persons, authorized to canvass votes and returns, to determine there-

Errors in returns

from how many votes were polled for the several persons who were candidates and voted for at the election of which the votes are being canvassed.

Omissions and clerical errors in returns

993. SEC. 68. If upon proceeding to canvass the votes it shall clearly appear to the canvassers that in any statement produced to them, certain matters are omitted in such statement which should have been inserted, or that any mistakes which are clerical merely, exist, they shall cause the said statement to be sent by one of their number (whom they shall depute for that purpose,) to the precinct or ward judges, or to the county board of canvassers (as the case may be,) from whom they were received, to have the same corrected, and the judges of election or county clerk (as the case may be,) when so demanded, shall make such correction as the facts of the case require, but shall not change or alter any decision before made by them, but shall only cause their canvass to be correctly stated; and the canvassing board may adjourn from day to day for the purpose of obtaining and receiving such statement. *Provided, always,* That they shall not delay counting past the day provided by law for the completion of the canvass.

Corrections; how made.

MISCELLANEOUS.

Compensation of judges and clerks.

994. SEC. 69. Judges and clerks of election shall each receive, as compensation for their services, two and a half dollars per day, of twelve hours or fractional part thereof of over four hours, and it shall be the duty of the clerk of each county, on the receipt of the election returns of any general or special election, to make out his certificate stating therein the compensation to which the judges and clerks of such election may be entitled for their services, and lay the same before the board of county commissioners at their next meeting; and the said board shall order the compensation aforesaid to be paid out of the county treasury.

Secretary of state to make poll books, tally lists, etc., and send to county clerks.

995. SEC. 70. It shall be the duty of the secretary of state to make out a complete form of poll books, tally lists, and all the forms required by this act, to be used by judges of election and the county clerks, and to send printed copies thereof to the county clerk of each county, and he shall cause to be printed in pamphlet form such parts of

this act as are necessary for the guidance of the judges of election in the discharge of their duties, and to send printed copies thereof to the county clerk of each county, for him to distribute to the judges in each precinct or ward. To have law printed and send to clerks.

996. SEC. 71. No saloon or other place at which intoxicating liquors are sold, shall be open during the day of any general or special election in this state. Any saloon keeper or other person who shall sell, barter or give away any intoxicating liquors during the day of any general or special election, before the polls are closed on such day, shall, for each and every offense, be liable to pay a fine of fifty dollars, or be imprisoned twenty days, or both, at the discretion of the court in which the case may be tried. Liquors not to be sold on election day. Penalty.

997. SEC. 72. The proper ballots, when not required to be taken from the ballot box for the purpose of election contests, shall remain in the ballot box, in the custody of one of the judges of the election, until the next election, when, before opening the polls, the ballot box shall be opened in the presence of the judges, and the ballots be destroyed by fire: *Provided*, That if the ballot boxes be needed for a special election before the legal time for commencing any proceedings in the way of contest shall have elapsed, or in case such judges at the time of holding of such special election have knowledge of the pendency of any contest in which the ballots would be needed, the said judges shall preserve the ballots in some secure manner, and provide for their being so kept that no one can ascertain how any elector may have voted. Ballots to remain in ballot box, in custody of judge. When ballots to be burned.

998. SEC. 73. Any person who shall falsely personate any voter, and vote under the name of such voter, shall, upon conviction, be punished by confinement and hard labor in the state penitentiary, not exceeding three years. Illegal voting. Penalty.

999. SEC. 74. If any elector, challenged as unqualified, shall be guilty of wilful and corrupt false swearing or affirmation by any oath or affirmation prescribed by this act, such person shall be adjudged guilty of wilful and corrupt perjury. False swearing.

1000. SEC. 75. Every person who shall wilfully and corruptly procure any person to swear or affirm falsely as aforesaid, shall be adjudged guilty of subornation of per- Procuring false swearing.

jury, and shall, upon conviction thereof, suffer the punishment provided by law in the cases of wilful and corrupt perjury.

Wilful neglect of duty.

1001. SEC. 76. If any officer on whom any duty is enjoined by this act shall be guilty of any wilful neglect of such duty, or of any corrupt conduct in the execution of the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment; the fine in no case to exceed the sum of five hundred dollars, nor the imprisonment the term of one year.

Judge permitting illegal voting.

1002. SEC. 77. In case any judge of election shall knowingly and wilfully permit any person to vote at any election who is not entitled to vote thereat, the said judge so offending shall, on conviction thereof, be adjudged guilty of a misdemeanor, and shall be sentenced to pay a fine not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding six months.

Bribery, menace and undue influence

1003. SEC. 78 If any person shall, by bribery, menace, or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any voter of this state, in giving his vote or ballot, or deter him from giving the same, or disturb, or hinder him in the free exercise of the right of suffrage at any election in this state, or shall fraudulently or deceitfully change or alter a ballot or cause any other deceit to be practiced with intent fraudulently to induce such elector to deposit the same as his vote, and thereby have the same thrown out and not counted; every person so offending against the provisions of this act, shall be deemed guilty of a misdemeanor, punishable by fine not exceeding two hundred and fifty dollars, or by imprisonment not exceeding six months.

Penalty.

Voting in ward or precinct where not a resident.

1004. SEC. 79. Any person who, at any general or special election, or any city or charter election, shall knowingly vote or offer to vote in any election precinct or ward in which he does not reside, shall, on conviction, be adjudged guilty of a misdemeanor, and punishable by fine not exceeding two hundred dollars, or by imprisonment not exceeding six months.

Penalty.

1005. SEC. 80. If any elector shall accept, or receive from any person whomsoever, any money or other valuable

thing for and in consideration of his voting for or against any person or persons who are candidates at any election in this state, he shall be deemed guilty of a misdemeanor, and punishable by a fine not exceeding two hundred dollars, or by imprisonment not exceeding six months. Bribery. Penalty.

1006. SEC. 81. If any person shall mutilate or erase any name, figure or word in a poll book, taken or kept at any election; or if any person shall take away such poll book from the place where it has been deposited for safe keeping with an intention to destroy the same, or to procure or prevent the election of any person; or if any person shall destroy any poll book so taken and kept at any election, he or she shall be deemed guilty of a misdemeanor, and on conviction, shall be fined not exceeding five hundred dollars or imprisoned not exceeding sixty days in the county jail. Mutilation, destruction or stealing poll book. Penalty.

CONTESTED ELECTIONS.

1007. SEC. 82. Any qualified elector may institute proceedings to contest the election of any person to the office of supreme, district or county judge. The supreme court shall have original jurisdiction for the adjudication of such contests, and shall prescribe rules for practice and proceedings therein. Any elector may contest election of judge. Supreme court to have jurisdiction.

1008. SEC. 83. Any candidate or elector being desirous of contesting the election of any person declared elected governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, superintendent of public instruction, or regent of the university, shall, between the sixth and tenth days of the first session of the general assembly, after the day of election, file a notice of such intention with the secretary of the senate, specifying the particular points on which he means to rely. Any candidate or elector may contest election of state officers or regents.

1009. SEC. 84. Upon any such notice being filed, as aforesaid, the general assembly shall, by resolution, determine on what day they will meet in joint convention to take action in any such contest, and thereupon a certified copy of the notice, filed by any contestor, shall be served upon the person whose election is sought to be contested, or by leaving a copy thereof at his last or usual place of Proceedings in case of contest.

residence, by such person as shall, by resolution, be appointed, with a notice that he is required to attend the joint convention, on the day so fixed, to answer the contest.

Testimony.

1010. SEC. 85. On the hearing of any contested election for any of the offices named in section eighty-three of this act, the parties to such contest may introduce written testimony to be taken in manner to be prescribed by the joint convention; but no depositions shall be read on such hearing unless the opposite party shall have had reasonable notice of the time and place of taking the same.

Rules governing

1011. SEC. 86. In conducting any contested election for offices named in section eighty-three of this act, the following rules shall be observed, to-wit:

First—On the day, and at the hour appointed for that purpose, the general assembly, with its proper officers, shall convene in joint convention.

Second—The president of the senate shall preside, but when he is the contestee, the president *pro tem.* of the senate shall preside.

Third—The parties to the contest shall then be called by the secretary of the senate, and if they answer, their appearance shall be recorded.

Fourth—The contestor shall first introduce his testimony, and then the contestee shall introduce his, and after the testimony is gone through on both sides, the contestor may, by himself or by his counsel, open the argument, and the contestee may then proceed by himself or his counsel to make his defense, and the contestor be heard in reply.

Fifth—After the arguments are thus gone through by the parties, any member of the joint convention shall be at liberty to offer his reasons for the vote he intends to give; *provided*, that the convention may limit the time of argument and debate.

Sixth—The secretary of the senate shall keep a regular journal of the proceedings. The manner of taking the decision shall be by a call of the members, and a majority of all the votes given shall decide.

Election of senator or member house; by whom contested.

1012. SEC. 87. The election of any person declared duly elected as a senator or member of the house of representatives, may be contested by any qualified voter of the

county or district to be represented by such senator or representative.

Notice to be served on contestee.

1013. SEC. 88. The contestor shall, within ten days after the canvass of the votes, serve on the contestee a a statement, as hereinafter required, in relation to county officers, except the list of illegal votes, with a notice of taking depositions, if any are to be taken to be used at the trial.

County judge or justice may issue subpœnas.

1014. SEC. 89. Any county judge or justice of the peace of a county in the district where the contest arises, may issue subpœnas in the above cases, and shall have power to compel the attendance of witnesses; and depositions may be taken under the rules for taking depositions in the district courts.

Statement, notice, etc., to be indorsed and sent to secretary of state.

1015. SEC. 90. A copy of the statement and of the notices for taking depositions, with the service endorsed and verified by affidavit, if not served by an officer, shall be returned to the officer taking the deposition, and with the depositions shall be sealed up and transmitted by mail or by the hands of a sworn officer to the secretary of state, with an indorsement thereon, showing the nature of the papers, the names of the contesting parties, and the branch of the general assembly before which the contest is to be tried.

Secretary to deliver same to presiding officer of house.

1016. SEC. 91. The secretary of state shall deliver the same, unopened, to the presiding officer of the house in which the contest is to be tried, on or before the fifth day of the session of the general assembly; and the presiding officer shall immediately give notice that such papers are in his possession.

Right of assembly to take depositions, etc., not abridged.

1017. SEC. 92. Nothing herein contained shall be construed to abridge the right of either branch of the general assembly to extend the time to take depositions, or to send for and examine any witness it may desire to hear on such trial.

COUNTY OFFICERS.

Election of county officers.

1018. SEC. 93. The election of any person declared duly elected to any county office, except the office of county judge, may be contested by any elector of the county:

On what grounds contested

First—For mal-conduct, fraud or corruption on the part of the judges of election in any precinct, or ward or any of the boards of canvassers, or on the part of any member of those boards.

Second—When the contestee is not eligible to the office to which he has been declared elected.

Third—When illegal votes have been received, or legal votes rejected at the polls, sufficient to change the result.

Fourth—For any error or mistake in any of the boards of judges or canvassers, in counting or in declaring the result of the election, if the error or mistake would affect the result.

Fifth—For any other cause (though not enumerated above) which shows that another was the legally elected person.

Certain causes not sufficient to set aside election.

1019. SEC. 94. The matter contained in the first, third and fourth causes of contest shall not be held sufficient to set aside the election, unless such causes be found sufficient to change the result.

Trial to be before county judge and two justices.

1020. SEC. 95. The judges before whom contested elections of county officers, except county judges, shall be tried and determined, shall be the county judge of the county in which the contest arises, and two disinterested justices of the peace of the same county; said justices to belong to different political parties when practicable, and to be selected by the county judge. Said judges shall sit together at the trial, and a judgment in which any two of them agree, shall be a judgment in the case.

County clerk to act as clerk at trial and record proceedings in record of county court.

1021. SEC. 96. The county clerk shall act as clerk at trials before said judges, and the proceedings therein shall be recorded in the records of the county court, the same as in any case in said county court, and if the county clerk is a party to any trial, the said judges in such case shall appoint another person to act as their clerk. The contestor shall file in the office of the county clerk, within twenty days after the day when the votes are canvassed, a written statement of his intention to contest the election, setting forth the name of the contestor, and that he is an elector of the county; the name of the contestee; the office contested; the time of the election, and the particular causes

Contestor to file statement; when

What statement to contain.

of contest; which statement shall be verified by the affidavit of the contestor or some elector of the county, that the causes set forth are true as he verily believes. But before the county judge is required to take jurisdiction of the contest, the contestor must file with the judge or attorney, a bond with security to be approved by said judge or attorney, and conditioned to pay all costs in case the election is confirmed, or the statement be dismissed, or the prosecution fails.

Contestor to file bond.

1022. SEC. 97. When the reception of illegal, or the rejection of legal votes is alleged as a cause of the contest, the number of persons who so voted or whose votes were rejected, and the precinct or ward where they voted, or offered to vote, shall be set forth in the statement.

Number of illegal votes received, or legal votes rejected, to be given in statement.

1023. SEC. 98. The county judge shall fix a day for the trial to commence, not more than thirty nor less than twenty days after the notice of contest is filed, and shall thereupon forthwith issue notice to the contestee, which shall contain the time and place of trial, the name of contestant, and a brief statement of the causes of contest, which notice shall be served upon the contestee, by copy, by the sheriff of the county at least fifteen days before the day of trial. The testimony may be oral, or by depositions taken before any justice of the peace, or other officer authorized to take depositions, upon four days' notice.

Time of trial.

Notice to contestee.

Testimony.

1024. SEC 99. The style and form of process, the officers by whom served, and the manner of service of process and papers, and the fees of officers and witnesses shall be the same as in the county court, so far as the nature of the case admits. The command to a witness may be to appear at ——— on ———, to testify in relation to a contested election wherein A—— B——— is contestor and C—— D——— contestee.

Style, form and manner of process, etc.

1025. SEC. 100. The trial of contested elections shall take place at the county seat, unless adjourned to some other place within the county, by the concurrence of the court and the parties; and this court shall have all the powers incident to a court of record which may be necessary to the right hearing, conduct, and determination of the matter before it.

Place of trial.

Court may direct attendance of sheriff and constable.

1026. SEC. 101. The court may direct the attendance of the sheriff or a constable when necessary.

Witnesses to answer touching qualifications.

1027. SEC. 102. It shall be lawful to require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter; and, if he was not a qualified voter in the precinct or ward in which he voted, and if the witness answers such questions, no part of his testimony shall be used against him in any criminal action, except for perjury in giving such testimony.

Testimony not to be used against voter not qualified, except for perjury.

Assembly or udges may send for ballot box and poll books.

1028. SEC. 103. If upon the trial of any contested election, for any officer mentioned in this act, it be proven that a vote or votes, that were illegal, were cast in any precinct or ward, the general assembly, senate, house of representatives, or the trial judges provided for in this act (as the case may be,) shall have power, if such illegal vote or votes be sufficient to change the result, to send to the precinct or ward where such illegal voting was done and obtain of their custodians the poll book and ballot box used at such election, and when so obtained, shall have power to take out of the ballot box the ballots bearing the number corresponding to the number opposite the name on the poll book of the persons who have thus been proven to have voted illegally. The ballot or ballots so taken from the ballot box shall be examined, and if it be found that any or all of them bear the name of the contestee, they shall, or so many of them as do bear his name, be deducted from his vote, and the determination shall be in accordance with the result after such deduction shall have been made; *provided*, that if it be found that illegal votes were cast for another person, they shall be deducted from such person's vote.

May open and examine same.

Illegal votes bearing name of contestee to be deducted from his vote.

Judgment of court.

1029. SEC. 104. The court shall pronounce judgment, whether the contestee or any other person was duly elected, and the person so declared elected will be entitled to the office upon qualification. If the judgment be against the contestee, and he has received his certificate, the judgment annuls it. If the court finds that no person was duly elected, the judgment shall be that the election be set aside.

1030. SEC. 105. The said judges shall be entitled to

receive five dollars each per day for the time occupied by the trial, to be paid out of the county treasury. Compensation of judges.

1031. SEC. 106. The contestor shall be liable to the officers and witnesses for all the costs made in the case, but if the judgment be against the contestee, or the election be set aside, the contestor shall have judgment in the amount of the costs against the contestee, to be recovered in like manner as upon executions issued out of the county court. Costs of trial, by whom paid.

1032. SEC. 107. Executions for cost shall be issued from the county court in election contest cases, in the same manner, and with like effect, as in any case pending or determined in the county court. Execution for costs.

1033. SEC. 108. After final judgment in any contested election case, the county judge shall have the same authority to enforce any order made at such trial, and the judgment therein, as in any case tried in the county court. Judge may enforce any order made at trial.

TOWNSHIP AND PRECINCT OFFICERS.

1034. SEC. 109. Contested elections of town and precinct officers shall be tried before the county board of canvassers, in the same manner as is provided by law for contesting elections of county officers, so far as the same is practicable. Contest of town and precinct officers.

REGISTRATION.

1035. SEC. 110. The judges of elections in the several wards and election precincts, shall meet on Tuesday, three weeks before the day upon which any general election shall by law be appointed to be held, at nine o'clock a. m. of said day, and proceed to make a registry list, as hereinafter prescribed, of the names of all persons qualified and entitled to vote at the ensuing election in the ward or precinct in which they are judges, which list, when completed and revised, as hereinafter provided, shall constitute the registry of electors of said precinct. Whenever at the last election in any precinct, prior to the meeting of such board of registry, the number of votes cast in such precinct shall have exceeded three hundred, the said board may continue in session for the purpose of making such registry, five When judges to meet to make registry list. How long to continue in session.

days if necessary; when the number of votes cast in such precinct shall have exceeded one hundred, the said board may continue in session, for the purpose of making such registry, three days if necessary, otherwise but one day.

What registry list to contain.

1036. SEC. 111. The list so made shall contain the names of the qualified electors of the ward or voting precint in which the same is made, alphabetically arranged, according to surnames, so as to show in one column the name of each elector at full length, and in another the place of his residence, designated by the number or name of street, and number of house, if known, or the section or other subdivision thereof, according to United States surveys, on which such elector shall reside, if he reside on surveyed lands, and if not, such description as will best locate his residence. Said board shall enter on said list the names of all legally qualified electors in such ward or precinct, or of those who will become such by lapse of time, on or before the next ensuing day of such general election, as aforesaid, in all cases in which such entry can be made consistent with the provisions hereinafter contained. For the convenience of the said board they are authorized to take from the office of the county clerk the poll list of such ward or precinct, filed by the judges of the last preceding election in such precinct. Said board shall make four copies of such registry list when revised and completed, which list they shall certify to be correct, and forward one copy to the office of the county clerk, and retain two copies for use on election day; and one copy they shall, within two days from the completion thereof, post in some conspicuous place where the last election was held in such precinct and so as to be accessible and convenient to any elector who may desire to inspect the same. The board of county commissioners may cause to be printed and published any such registry list when completed, at an expense not exceeding two cents per name thereon.

Board may take poll list from office of county clerk.

Number of lists.

How disposed of

Commissioners may publish.

When and where board shall meet to revise.

1037. SEC. 112. Every board of registry shall meet on the Tuesday of the week preceding any and every general election, at the place designated for holding such election, for the purpose of revising, correcting and completing such registry list, and in all cases they shall meet at

nine o'clock a. m., and remain in session until six o'clock of said day. Said boards of registry shall meet at the place designated for holding such election, on the day preceding the election, at nine o'clock a. m., and remain in session until six o'clock p. m., of the same day, at which time any elector whose name is not on the revised registry list, may have his name placed thereon; *provided*, he shall take and subscribe to the oath prescribed in section forty of this act, and shall prove by the oath of two registered electors of the precinct (or ward) that such person has been a resident of the precinct ten days, of the county thirty days and of the state six months next preceding the day of election, and that they verily believe him to be a qualified elector. Said oaths shall be taken and subscribed to in the presence of the board of registry, either of whom may administer the oath; and said oaths shall be preserved and filed in the office of the county clerk, together with the poll lists of said election. The name of such person and his residence, as given by him, shall be entered upon the registry list and opposite the name of such person shall be marked the word, "affidavit" and the names of the witnesses.

Manner of registration last day.

Board may administer oath.

Lists and oaths to be filed with county clerk.

Entry to be made in list when oath is taken.

1038. SEC. 113. No vote shall be received at any election unless the name of the person offering to vote shall be found on the the said certified registry list.

No vote received unless name on list.

1039. SEC. 114. In cases of vacancy in the office of judge of election, or in the board of registry, at any time when they meet, according to law, the vacancy may be filled by the election, by the qualified electors then present, of a qualified elector to serve as a member of such board of registry until the appearance of a judge of election duly appointed in and for such ward or precinct.

Vacancy in board; how filled.

1040. SEC. 115. Every judge of elections or other person serving on such board of registry, shall, before entering upon the duties of his office, take an oath, to be administered by any justice of the peace, or other officer present, having power to administer oaths, faithfully to discharge the duties of registrar, according to law, and to the best of his skil and ability. If no such officer shall be present, the oath may be administered by one judge or registrar to another.

Members of board to take oath.

Compensation of board.

1041. SEC. 116. The members of said board of registry shall receive the same compensation as allowed by law to judges of elections, for every day actually employed in the making and completing of the registry.

Secretary to furnish registry books to county clerks.

1042. SEC. 117. It shall be the duty of the secretary of state to make out a complete form of a registry book, alphabetically arranged with the oath of the registrar in blank, and the requisite blank columns properly headed, and have the same printed, and to send copies thereof to the county clerk of each county in the state, together with a sufficient number of copies of the registry and election laws bound in pamphlet form.

To furnish registry and election laws.

County clerk to distribute to judges.

1043. SEC. 118. It shall be the duty of the county clerk of each county to furnish annually for the use of the board of registry in each precinct or ward in his county, four printed copies of said blank registries, and send them by mail or other safe conveyance to the judges of elections in such wards or precincts at least twenty (20) days prior to the day of the first meeting of the board of registry as herein provided.

When and how sent.

Revision of registry in municipal corporations; when made.

1044. SEC 119. The persons appointed judges of election in every incorporated town or city, hereafter, shall meet on Tuesday of the week preceding each municipal election in [the] town or city in which they are such judges, in the several precincts at the place of holding municipal elections therein, for the purpose of revising, correcting, and completing the annual registry in this act required to be made, and for that purpose they are authorized to take from the office of the county clerk the last annual registry of electors of the wards or precincts, including the town or city in which they are appointed judges.

How registrars shall proceed in correcting registry.

1045. SEC. 120. The said last mentioned registrars shall, in all respects, proceed in the revising and correcting of their respective wards or precincts, as is hereinbefore provided for in the revision and correcting of the annual registries, except that the registry list, as so revised and corrected by such city or town registrars, shall be filed with the city or town clerk of the proper city or town.

1046. SEC. 121. All registries taken from the county clerk's office under the provisions of the last section, shall

be returned to the county clerk within ten (10) days after the day of registry for which they may be taken out of the same. Return of registries taken from county clerk's office

1047. SEC. 122. The same proceedings shall be had in all cases of special elections, as are herein provided for general elections, so far as the same may be applicable. Proceedings in special elections

1048. SEC. 123. All judges of election shall, on being appointed, hold their office for one (1) year, or until their successors are appointed, and shall serve at all special elections during their term of office, and they shall, severally, before entering upon their duties as judges at any election, take and subscribe the oath prescribed by law in such cases. Term of office and duties of judges.

1049. SEC. 124. All judges of election now appointed shall hold their offices until the next appointment of judges by the board of county commissioners, and shall serve at all special elections during their term of office. Term of judges now acting.

1050. SEC. 125. In case any new election precinct shall be formed, the county commissioners shall immediately appoint judges of elections therein; and in the case of the division of any voting precinct, the names of all voters residing in that part of any precinct stricken off shall be stricken from the registry list in the voting precinct from which such part shall have been stricken, and shall be inserted in the registry lists of the precinct to which such part may have been attached, at the first registration of voters' names in each such precinct respectively. New precincts. Division of precincts.

1051. SEC. 126. That hereafter the judges of elections, when acting as a board of registry in cases provided by law, shall not, in any case, allow the name of any person to be placed on the list of registered voters, called the registry of elections, in any ward or voting precinct, in this state, unless in the following cases: When registry board to enter name in list.

First—When the person whose name is to be registered, and also the facts of his legal qualification as a voter in the ward, township or precinct in which such registry is made, shall be known to one or more of the persons acting as such board of registry, and the judge or person so acting on such board of registry to whom such voter and his legal qualifications are known shall sign his name on the regis-

Member of board liable; when and how.

try roll or list opposite the name of such voter, and the judge or person acting as member of such board of registry so signing his name, opposite the name of such voter shall be deemed and held to have vouched under oath that such person so registered is a legal voter within the ward, township or precinct in which such registry is made; and such judge or person acting on such board of registry who shall sign his own name as aforesaid, shall be subject to the same liability in all respects as a person making affidavit under the provisions of the next following clause of this section.

Elector to take oath.

Secondly—When a legal voter being registered in such ward, township or precinct, and known as such by one or more of such judges or person acting on such board of registry, or proven to be such by affidavit of some known legal voter, registered in such ward, township or precinct, in similar form to that herein following, shall make affidavit in substance as follows:

Form of oath.

I, ———, do solemnly swear, in the presence of the ever-living God, that I am a resident and a legal voter in ——— ward, (precinct), in the county of ———, state of Colorado, and that I well know —— ———, who aims to be registered as a legal voter in said ——— ward (precinct), and I know that he has resided in the state of Colorado during six months, in ——— county thirty days last past, and has resided in said ward during ten days last past, and still resides therein, and his place of residence is at No. —, —— street, (on ——— of section No. ——,) in said (ward) ——, (precinct) and I believe him to be of lawful age.

The blanks therein filled with the proper names, dates, places and numbers, as the case may require, and such affidavit shall show that the person so offering to vote, is or will be by the day of election next ensuing, in all respects a legal voter in such ward or precinct.

Illegal registration by board.

1052. SEC. 127. Every judge of election, or person acting as such on any board of registry, who shall wilfully set his name on the registry roll opposite the name of any voter registered on such list, knowing him to be not legally entitled to be registered upon such list, shall be deemed

guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine of not less than three hundred (300) dollars, nor more than one thousand (1,000) dollars; or be imprisoned not less than thirty (30) days, nor more than ninety (90) days, or may be punished by both such fine and imprisonment. Penalty.

1053. SEC. 128. If any person shall make an affidavit as provided in section one hundred and twenty-five of this act, for the purpose of causing the name of any person to be registered in any ward or precinct in this state, and shall in such affidavit state falsely the name of such person to be registered, or the fact of his having resided in such precinct or ward a sufficient length of time to entitle him to be so registered, or the place of his actual habitation or residence, or the fact of his age, or of his residence within a sufficient time to entitle him to be registered, the person so making a false affidavit shall be deemed guilty of a wilful and corrupt perjury, and on conviction shall be punished accordingly. False swearing. Penalty.

1054. SEC. 129. Every person who shall procure his own name, or the name of any other person, to be registered on the list of registered voters called the registry list, in any ward or voting precinct in this state, in which any election is, or may be by law authorized to be held, and in which ward or precinct such person shall not be at the time of such registry entitled to be registered in such ward or voting precinct; or if any person shall procure or attempt to procure to be registered in any ward or voting precinct, any fictitious name as the name of any person entitled to be registered in such ward or precinct, every person so procuring or attempting to procure such registry of the name of any person not by law entitled to be registered, or any fictitious name in manner aforesaid, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred (200) dollars, nor more than five hundred (500) dollars, or be imprisoned not less than ten (10,) nor more than forty (40) days for each and every offense, or may be punished by both such fine and imprisonment. Person procuring false or illegal registration. Penalty.

1055. SEC. 130. The registry of voters' names shall

Time of completion of registry.

be completed on the evening next preceding each and every election appointed by law to be held in each and every precinct, and no names shall be added to the registry list in any ward or precinct, after the close of the registration on the day preceding such election; and in case any judge of elections, or person acting as member of any board of registry shall wilfully and knowingly add any name or names of any person, or any fictitious or false name to the list of registered voters in any ward or voting precinct after the close of the registry of voters' names, on the next day preceding any election in such ward or voting precinct, according to law, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than two hundred (200) dollars, nor more than five hundred (500) dollars, for each and every offense.

Penalty for adding names to registry after close of registration.

Fines for benefit of school fund.

1056. SEC. 131. All fines or forfeitures collected under the provisions of this act, shall be paid to the county treasurer of the county wherein the offense was committed, for the benefit of the school fund of such county.

Repeal.

1057. SEC. 132. That all acts and parts of acts enacted by any territorial legislature, relating to elections, be, and the same are hereby repealed.

Approved, March 8, 1877.

CHAPTER XXXI.

EMINENT DOMAIN.

AN ACT TO PROVIDE FOR THE EXERCISE OF THE RIGHT OF EMINENT DOMAIN.

Be it enacted by the General Assembly of the State of Colorado:

In what manner compensation for private property taken for public or private use shall be ascertained.

1058. SECTION. 1. That private property shall not be taken or damaged for public or private use without just compensation; and in all cases in which compensation is not made by the state in its corporate capacity, such compensation shall be ascertained by a board of commissioners of not less than three freeholders, or by a jury when required by the owner of the property, as hereinafter prescribed.

1059. SEC. 2. That in all cases where the right to take private property for public or private use without the owner's consent or the right to construct or maintain any railroad, public road, toll-road, ditch, bridge, ferry, telegraph, flume or other public or private work or improvement, or which may damage property not actually taken, has been heretofore or shall hereafter be conferred by general law or special charter, upon any coporate or municipal authority, public body, officer or agent, person or persons, commissioner or corporation, and the compensation to be paid for, or in respect of the property sought to be appropriated or damaged, for the purposes above mentioned, cannot be agreed upon by the parties interested; or in case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is non-resident of the state, it shall be lawful for the party authorized to take or damage the property so required, or to construct, operate and maintain any railroad, public road, toll-road, ditch, bridge, ferry, telegraph, flume or other public or private work or improvement, to apply to the judge of the district or county court, either in term time or vacation, where the said property or any part thereof is situate, by filing with the clerk a petition, setting forth by reference, his or their authority in the premises; the purpose for which said property is sought to be taken or damaged; a description of the property, the names of all persons interested therein as owners or otherwise, as appearing of record, if known, or if not known, stating that fact, and praying such judge to cause the compensation to be paid to the owner, to be assessed. If the proceedings seek to affect the property of persons under guardianship, the guardians or conservators of persons having conservators, shall be made parties defendant, and if of married women, their husbands shall also be made parties. Persons interested whose names are unknown may be made parties defendant by the description of the unknown owners; but in all such cases an affidavit shall be filed by, or on behalf of the petitioner, setting forth that the names of such persons are unknown. In cases where the property is sought to be taken or damaged by the state for the purpose of establishing, operating or maintaining any state-house, or charitable

Manner of proceeding in case of disagreement, or where party is incapable, unknown or non-resident.

or other state institution or improvement, the petition shall be signed by the governor or such other person as he shall direct, or as shall be provided by law.

Application to judge made in vacation

1060. SEC. 3. If such petition be presented to a judge in vacation, the judge shall note thereon the day of presentation, and shall also note thereon the day when he will hear the same, and shall order the issuance of summons to each resident defendant, and the publication of notice to each non-resident defendant, and the clerk of the court shall at once issue the summons and give notice accordingly.

Summons and publication of notice.

1061. SEC. 4. Such summons shall be made returnable on such day and hour as the court or judge may fix and determine, not less than ten (10) days after the issuance of such summons, and the same shall be served in the same manner, as in other cases, at least ten (10) days before the return day thereof. When it appears that the owners or any of them, of the property sought to be condemned are non-resident, the court or judge shall order a notice to be published in some newspaper published in said county, addressed to such non-resident owner or owners, in which notice shall be stated the name of the petitioner or petitioners, a full and accurate description of the property sought to be taken or condemned, the purpose for which such condemnation is asked, and the time and place when such non-resident owner is required to appear, and the title of the court, or name of the judge before whom said application is to be heard. The court or judge shall also fix and determine when said notice shall be made returnable, but in no case shall it be made returnable in less than thirty (30) days, and the same shall be published at least four times in some weekly newspaper before the return day thereof. If there shall be no weekly newspaper published in the county, in which such proceedings are had, the court or judge shall direct that said notice be published in some newspaper named by him, published at the nearest convenient place to such county.

1062. SEC. 5. Causes may be heard by such judges in vacation as well as in term time, but no cause shall be heard earlier than ten (10) days after service upon defendant, or upon due publication against non-residents. Any

number of separate parcels of property situate in the same county, may be included in one petition, and the compensation for each shall be assessed separately, by the same or different commissions or juries, as the court or judge may direct. Amendment to the petition, or to any paper or record in the cause may be permitted whenever necessary to a fair trial and final determination of the questions involved. Should it become necessary at any stage of the proceeding to bring a new party before the court or judge, the court or judge shall have the power to make such rule or order in relation thereto as may be deemed reasonable and proper; and shall also have power to make all necessary rules and orders for notice to parties of the pendency of the proceeding, and to issue all process necessary to the execution of orders and judgments as they may be entered.

When cases shall be heard. Separate parcels included in one petition. Amendments to petition and new parties.

1063. SEC. 6. The court or judge may adjourn the proceedings from time to time, shall direct any future notice thereof to be given that may seem proper, shall hear proofs and allegations of all parties interested touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint a board of commissioners of not less than three freeholders, to ascertain and determine the necessity for taking such lands, franchises or other property, and to appraise and determine damages, and compensation to be allowed to the owner and person interested in the real estate or property proposed to be taken or damaged in such county, for the purposes alleged in the petition, and said court or judge shall fix the time and place for the first meeting of such commissioners. The said commissioners, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said commissioners, and any one of them may administer oaths to witnesses produced before them; they may issue subpœnas and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose. They shall hear the proofs and allegations of the parties, and after viewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owner or parties interested, for the

Proceedings in court.

Duties and powers of commissioners.

lands, real estate or claims to be taken or affected, as well as all damages accruing to the owners or parties interested in consequence of the condemnation of the same, taken or injuriously affected, as aforesaid. They shall make, subscribe, and file with the clerk of the court in which such proceedings are had, a certificate of their said ascertainment and assessment, in which such lands, real estate or claims shall be described, with convenient certainty and accuracy. The court or judge, upon such certificate or verdict of a jury as hereinafter provided, and due proof that such compensation and separate sums, if any be certified or found to have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in court, or with the clerk of the court, for that purpose, shall make and cause to be entered in its minutes, a rule, describing such lands, real estate or claims in manner aforesaid, such ascertainment of compensation, with the mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the recorder's office of the proper county, in like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested, to the proper parties. Upon the entry of such rule the said petitioner shall become seized in fee except as hereinafter provided, of all such lands, real estate or claims described in said rule, as required to be taken as aforesaid, and may take possession of, and hold and use the same for the purposes specified in said petition, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate or rule of said court or judge: *Provided*, any such right of way shall never give the petitioner any right, title or interest to any vein, ledge, lode or deposit found or existing in the premises condemned. And if at any time after an attempted or actual ascertainment of compensation under this act, or any purchase or by donation to said petitioner, of any lands, real estate or claims, for purposes specified in the petition, it shall appear that the title acquired thereby, to all or any part of such lands for the use of such petitioner, or if said assessment shall fail or be deemed defec-

Certificate of ascertainment or assessment of compensation.

Upon entry of rule petitioner to become seized in fee.

Petitioner not to have title to mineral veins or deposits.

tive, the said petitioner may proceed and perfect such title by procuring an ascertainment of the compensation proper to be made to any person who has title, claim or interest in, or lien upon such lands, real estate or claims, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this act, the court or judge may by rule in that behalf made, authorize the said petitioner, if already in possession, and if not in possession to take possession of and use said premises during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against such petitioner on account thereof. *Provided*, such petitioner shall pay a sufficient sum into court, or to the clerk thereof, to pay the compensation in that behalf when ascertained. *Provided, further*, that the judge of the court before or wherein any such proceedings are had, shall determine the amount such petitioner shall be required to pay or deposit pending any such ascertainment; and in every case where possession shall be so authorized, it shall be lawful for the owner to conduct the proceedings to a conclusion, if the same shall be delayed by the petitioner. The said commissioners shall each receive four (4) dollars per day as compensation for each day actually employed, such compensation to be taxed by the court or judge. If any commissioner so appointed shall die, be unable or fail to serve, the court or judge may appoint another in his place, on reasonable notice of the application.

In what cases and how petitioner may proceed to perfect title.

Compensation of commissioners.

1064. SEC. 7. Any person, persons or company whose estate or interest is to be affected by the proceeding, may demand at the time of any hearing of such petition, and before the appointment of the commissioners herein provided, a jury of six freeholders residing in the county where such petition is filed, to ascertain, determine and appraise the damages or compensation to be allowed therefor, and thereupon said court or judge shall make an order for the drawing of such jury as herein provided.

Judge to order jury on demand.

1065. SEC. 8. In cases fixed for hearing of petition in vacation, it shall be the duty of the clerk of the court in whose office the petition is filed, at the time of issu-

Selection of jury

ing summons or making publication, to write the name of twenty-four disinterested freeholders of the county, on twenty-four separate slips of paper, each slip to contain but one name, and shall cause to be selected from said twenty-four names, six of said persons to serve as jurors; such selection to be made by lot and without choice or discrimination; and the said clerk shall thereupon issue *venire* directed to the sheriff of his county, commanding him to summon the six persons so selected as jurors to appear at the court-house in said county, at a time to be named in the *venire*.

Challenges and manner of proceeding when panel exhausted.

1066. SEC. 9. The petitioner and every party interested in the ascertaining of compensation, shall have the same right of challenge of jurors as in other civil cases in the district and county court. If the panel be not full by reason of non-attendance, or be exhausted by challenges, the judge hearing such petition shall designate by name the necessary number of persons of proper qualification, and the clerk or judge shall issue another *venire* returnable instanter, and until the jury be full.

Inspection of premises by jury; deliberation and verdict.

1067. SEC. 10. When the jury shall have been so selected and taken an oath to faithfully and impartially discharge their duties, said jury shall at the request of either party go upon the land sought to be taken or damaged, in person, and examine the same, and shall then return into court, if the proceedings be in term time, and if in vacation, then before the judge, and the said court or judge shall preside in the same manner and with like power as in other cases; evidence shall be admitted or rejected by the court or judge, according to the rules of law, and at the conclusion of the evidence, the matters in controversy may be argued by counsel to the jury; and at the conclusion of the arguments, the court or judge shall instruct the jury in writing in the same manner as in cases at law. The jury shall retire for deliberation in charge of a sworn officer, the same as in other cases. When such jury shall have agreed upon a verdict, the same shall then be returned into court. If any such jury shall be unable to agree, it may be discharged by such court or judge, and thereupon another jury shall be summoned as soon as

practicable, in the same manner as before, and said court or judge shall have power, and it is hereby made the duty of such court or judge, to continue the proceedings and to summon and empanel a jury or juries until a verdict can be had. Any person, party or corporation feeling aggrieved by any such verdict, may move before such court or judge for a new trial, in the same manner and for the same causes, as in action at law, and the refusal of such court or judge to grant a new trial, may be excepted to and assigned for error. New trial and exceptions.

1068. SEC. 11. The judge or court shall, upon such verdict proceed to adjudge and make such order as to right and justice shall pertain, ordering that petitioner enter upon such property and the use of the same, upon payment of full compensation as ascertained as aforesaid; and such order with evidence of such payment, shall constitute complete justification of the taking of such property. Judgment and order upon verdict.

1069. SEC. 12. Any person not made a party may become such by filing his cross petition, setting forth that he is the owner or has an interest in the property sought to be taken or damaged by the proposed work; and the rights of such last named petitioner shall thereupon be fully considered and determined. New parties.

1070. SEC. 13. In all cases upon final determination thereof in either the district or county court, or before a district or county court judge in vacation, an appeal may be taken to the supreme court in the same manner as provided by law for taking of appeals from the district court to the supreme court; and a writ of error from the supreme court shall lie in every case to bring in review the proceedings therein, after such final determination. Appeals and writs of error.

1071. SEC. 14. In cases in which compensation shall be ascertained as aforesaid, if the owner or owners of the property taken or affected shall appeal or prosecute a writ of error, the petitioner may pay into court or to the clerk thereof, the amount of compensation so ascertained and awarded for the use of the owner or owners, and shall thereupon be entitled to take possession and use the property taken or affected, the same as if no such appeal or writ of error had been taken. The said money so deposited as Possession of property in case of appeal or writ of error.

aforesaid shall remain on deposit until such appeal or writ of error shall have been heard and determined: *Provided, however*, that if the owner or owners shall elect to receive such money before the determination of such appeal or writ of error, said appeal or writ of error shall thereupon be dismissed, so far as such owner or owners are concerned. If the appeal or writ of error shall be taken by the petitioner, the amount of compensation shall nevertheless be paid into court or to the clerk thereof, for the use of the owner or owners of the property condemned or affected before such petitioner shall have the right to take possession of and use said property so condemned or affected; and such compensation may be paid to such owner or owners, at any time before the determination of such appeal or writ of error, upon the execution and delivery of a good and sufficient bond by such owner or owners, with good and sufficient surety or sureties to be approved by said court or judge, in a sum double the amount of such compensation, conditioned that such owner or owners will pay and refund to such petitioner all, or such part of said sum as said owner or owners may be required or adjudged to pay said petitioner, together with the cost of said appeal or writ of error.

Payment of compensation.

1072. SEC. 15. Payment of compensation adjudged may in all cases be made to the court or the clerk thereof, who shall on demand, pay the same to the party entitled thereto, taking receipt therefor; or payment may be made to the party entitled thereto, his, her or their conservator or guardian.

Entry of verdict and judgment of record.

1073. SEC. 16. The court or judge shall cause the verdict of the jury and the judgment of the court to be entered upon the records of said court.

Estimation of value and damages.

1074. SEC. 17. In estimating the value of all property actually taken, the true and actual value thereof at the time of the appraisement shall be allowed and awarded, and no deduction therefrom shall be allowed for any benefit to the residue of said property; but in estimating damages occasioned to other portions of claimant's property, or any part thereof other than that actually taken, the value of the benefits if any, may be deducted therefrom; *provided, how-*

ever, that in all cases the owner or owners shall receive the full and actual value of all property actually taken, and in case the benefit to the property not actually taken exceed the damage sustained by the owner to property not actually taken, the owner or owners shall not be required to pay, or allow credit for such excess.

1075. SEC. 18. The report of the commissioners or the verdict of the jury, in every case shall state: What shall be stated in report of commissioners or verdict of jury.

First—An accurate description of the land taken.

Second—The value of the land or property actually taken.

Third—The damages, if any, to the residue of such land or property; and

Fourth—The amount and value of the benefit.

1076. SEC. 19. Bills of exception shall be allowed, signed and sealed by the court or judge, as in cases in law, within such reasonable time as shall be fixed by such court or judge. Bills of exception.

1077. SEC. 20. All laws and parts of laws in conflict with the provisions of this act are hereby repealed; but such repeal shall not impair or affect any act done or any right accrued or acquired under the law so repealed, and all proceedings commenced or pending by virtue of the laws so repealed, may be prosecuted and defended to final determination in the same manner and with the same effect as they might under such laws, notwithstanding such repeal. *Provided*, that this act shall not be construed to repeal any law or part of law upon the same subject passed by this general assembly, but in all such cases this act shall be construed as providing a cumulative remedy. Repeal; not to affect accrued or acquired rights.

Approved, February 12, 1877.

CHAPTER XXXII.

EVIDENCE.

[Revised Statutes, Chapter XXX.]

1078. SECTION 1. The printed statute books of the United States, and of the several states and territories, printed under the authority of such states and territories,

What statute books and reports of decisions are evidence

the books of reports of decisions of the supreme court and other courts of the United States and of the several states and territories, published by authority of such courts, may be read as evidence, in all courts of this state, of such acts and decisions.

Certified copies of proceedings and judgments before justices of the peace.

1079. SEC. 2. Copies of the proceedings and judgments before justices of the peace, certified by such justice or justices under their hands and seals, before whom such proceeding or judgment is had, shall be received as evidence of such proceeding or judgment; where such certified copy is to be used in any other county than where the justice resides, the same shall not be received as evidence, unless a certificate from the county clerk be thereto annexed, certifying that on the day the proceeding was had or the judgment rendered, such justice was a justice of the peace, duly commissioned and sworn.

Official certificate of register or receiver of land office.

1080. SEC. 3. The official certificate of any register or receiver of any land office of the United States, to any fact or matter on record in his office, shall be received and held competent to prove the fact as certified. The certificate of any such register of the entry or purchase of any tract of land within his district, shall be deemed and taken to be evidence of title in the party who made such entry or purchase, or his heirs and assigns; but a patent for land shall be deemed and considered a better legal and paramount title in the patentee, his heirs or assigns, than such register's certificate of entry and purchase of the same land.

Exemplification by secretary of state, of laws of other states, etc.

1081. SEC. 4. An exemplification by the secretary of the state, of the laws of the several states and territories, which may be transmitted by order of the executives or legislatures of such states, to the governor of this state, and by him deposited in the office of the said secretary, shall be admissable as evidence, in any court of this state.

In trials of actions on contracts, not necessary to prove copartnership, etc.

1082. SEC. 5. In trials of actions upon contracts, expressed or implied, where the action is brought by partners, or by joint payees or obligees, it shall not be necessary for the plaintiff, in order to maintain any such action, to prove the copartnership of the individuals named in such action, or to prove the christain or surnames of such partners, or joint payees or obligees, but the names of such copartners,

joint payees or obligees shall be presumed to be truly set forth in the declaration, petition or bill: *Provided*, that nothing herein contained shall prevent the defendant from pleading in abatement, as heretofore, or of proving on the trial either that more persons ought to have been made plaintiffs, or that more persons have been made plaintiffs than have a legal right to sue, in which event the defendant's right shall be as at common law.

Defendant may plead in abatement, or prove non-joinder or misjoinder

1083. SEC. 6. In action upon contracts, express or implied, against two or more defendants, alleged to have been made or executed by such defendants as partners or joint obligors or payors, proof of the joint liability or partnership of the defendants, or their christain or surnames, shall not in the first instance be required to entitle the plaintiff to judgment, unless such proof shall be rendered necessary by the filing of pleas denying the execution of such writing, verified by affidavit as required by law.

Proof of partnership or joint liability not necessary, unless defendant deny under oath

1084. SEC. 7. Copies of all papers, books or proceedings or parts thereof appertaining to transactions in their coporate capacity, of any town or city now incorporated, or that may hereafter be incorporated under any general or special law of this state, certified to be true copies by the clerk or keeper of the same, under the seal of such town or city, or under the private seal of said clerk or keeper, if there be no public seal, the clerk or keeper also certifying that he is entrusted with the safe-keeping of the original, shall be received as *prima facie* evidence of the facts so certified in any court in this state.

Certified copies of books and records of town or city.

AN ACT CONCERNING EVIDENCE.

[Session Laws, 1870.]

1085. SECTION 1. That whenever in the progress of any suit in any court in this state, either party thereto, shall rely for its maintenance or defense, in whole or in part, on any deed, bond, note, draft, bill of exchange, letter or any other writing alleged to have been executed, signed or written by the adverse party, and to have been lost or destroyed, the party so relying on the same as evidence in

Proof of loss or destruction of written instrument to be made before evidence of contents can be given.

his behalf in the trial of the cause, shall not be permitted to give evidence of the contents thereof by a competent witness or witnesses, until said party, his agent or attorney, shall first make oath to the loss or destruction thereof, and to the substance of the same.

For perpetuation of testimony and depositions contained in Chapter XXX, Revised Statutes, see Code of Civil Procedure.

CHAPTER XXXIII.

EXECUTIVE DEPARTMENT.

AN ACT TO PROVIDE FOR THE EXPENSES OF THE LEGISLATIVE EXECUTIVE AND JUDICIAL DEPARTMENTS OF THE STATE OF COLORADO.

WHEREAS, it is provided in section 19 of article 5 of the constitution, that no act of the general assembly shall take effect until ninety (90) days after its passage unless in case of emergency, (which shall be expressed in the preamble or body of the act;) and

WHEREAS, the legislative, executive and judicial departments are entirely unprovided with the means of procuring suitable rooms, stationery, fuel, light, printing, and other articles and things necessary for their convenience and use, and also that in the opinion of this general assembly, it is a case of emergency as contemplated in said section of the constitution. Therefore,

Be it enacted by the General Assembly of the State of Colorado:

Pro ision of rooms for legislative, executive and judicial departments, printi··g, stationery, etc., by secretary; to be by advertisement and contract.

1086. SECTION 1. That the secretary of state is hereby authorized and required to procure for the immediate use of the legislative, executive and judicial departments of the state of Colorado, convenient and commodious rooms, supplied with proper furniture and articles of use for such departments of state. In providing rooms for executive and judicial departments it shall be on the basis of occupation until the meeting of the general assembly, in the year 1881. He shall also procure and furnish the necessary books, statutes, stationery, printing, fuel, light, and other articles for the use of the legislative, executive and

judicial departments, and provide for printing, binding and distributing the laws, journals, and department reports, and other printing and binding which may be ordered by the general assembly or either house thereof. He shall immediately advertise for bids to provide and furnish such rooms, furniture and articles of use therein, necessary for furnishing and fitting up the same, and for providing such statutes, stationery, fuel, light and other articles, and doing the printing necessary for supplying the wants of the said several departments; said advertisement or advertisements to be inserted in two daily newspapers for two successive days. And such rooms, statutes, stationery, furniture, fuel and other articles, which may be ordered or required as aforesaid, shall be provided, supplied and furnished within two days after the last day of said advertisement, and the contract or contracts therefor shall be given to the lowest responsible bidder as in this act provided, subject to the approval of the governor and state treasurer.

Prices to be paid for articles furnished on contract.

1087. SEC. 2. The maximum price to be paid for any article purchased under such contract or contracts and for such printing and binding shall not exceed the current wholesale prices for such articles, printing and binding, severally, in the city of Denver on the day of receiving said bids.

Emergency.

1088. SEC. 3. This act shall take effect from and after its passage.

Approved, November 20, 1876.

AN ACT TO PRESCRIBE CERTAIN POWERS AND DUTIES OF THE OFFICERS OF THE EXECUTIVE DEPARTMENT, AND CERTAIN RULES IN RELATION TO THE FISCAL AFFAIRS OF THE STATE IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

ARTICLE I.

Where business of the executive transacted.

1089. SECTION 1. The governor shall keep his office at the seat of government, in which shall be transacted the business of the executive, and he shall keep a secretary at said office during his absence.

Executive journal.

1090. SEC. 2. He shall cause a journal to be kept in the executive office, in which shall be made an entry of every official act done by him, at the time when done. If in case of an emergency, acts are done elsewhere than in such office, an entry thereof shall be made in the journal as soon thereafter as possible.

Military record.

1091. SEC. 3. He shall cause a military record to be kept, in which shall be made an entry of every act done by him as commander in chief of the militia.

Rewards for apprehension of fugitives from justice.

1092. SEC. 4. Whenever the governor is satisfied that the crime of murder or arson has been committed within the state, and that the person charged therewith has not been arrested, or has escaped therefrom, he may in his discretion offer a reward not exceeding one thousand dollars for the arrest and delivery to the proper authorities of the person so charged, which reward, upon the certificate of the governor that the same has been earned, shall be audited and paid by the state out of any funds appropriated for such purpose.

Employment of counsel to assist in actions affecting rights or interests of state.

1093. SEC. 5. Whenever the governor is satisfied that an action or proceeding has been commenced which may affect the rights or interests of the state, he may, by and with the consent of the attorney general, employ counsel to assist the proper officer to protect such rights or interests; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the state, he may employ additional counsel to assist in the cause.

Payment of expenses incurred.

1094. SEC. 6. Expenses incurred under the preceding section, and in causing the laws to be executed, may be allowed by the governor, and upon his certificate, shall be audited and paid from the general contingent fund.

Reports of state officers.

1095. SEC. 7. The governor shall transmit all reports or copies of the same, received by him from the officers of the state, to the general assembly at the commencement of each regular session thereof.

Devolution of powers, duties and salary.

1096. SEC. 8. Whenever, by the impeachment of the governor, his removal from office, death or resignation, or absence from the state, the powers and duties of his office shall devolve upon the lieutenant governor, the salary of

the governor shall cease, and the same shall be received by the lieutenant governor as a full compensation for his services, until such disability shall cease; and during the time that the lieutenant governor shall act as governor, the duties and powers of the lieutenant governor shall devolve on the president of the senate *pro tem.*, who shall receive the salary of the lieutenant governor during such term of service.

Proceeds of sales of public lands to which state is entitled.

1097. SEC. 9. The governor is hereby authorized and empowered to receive from the treasury department of the United States, from time to time as he shall see fit to draw for the same, the five per centum of the net proceeds of sales of the public lands to which this state is or shall be entitled, pursuant to the act of congress approved March 3, 1875, and to execute the proper vouchers therefor. And upon the receipt of said moneys he shall forthwith pay the same into the treasury.

ARTICLE II.

Office and duties of secretary of state.

1098. SECTION 1. The secretary of state shall keep his office at the seat of government, and perform all the duties which may be required of him by law; he shall have charge of and keep all the acts and resolutions of the territorial legislature, and of the general assembly of the state, the enrolled copy of the constitution of the state, and all bonds, books, records, maps, registers and papers of a public character, which now are or may hereafter be deposited, to be kept in his office.

Care of state property.

1099. SEC. 2. He shall have charge, care and custody of the property of the state, when no other provision is made.

Countersigning and registering commissions.

1100. SEC. 3. All commissions issued by the governor, shall be countersigned by the secretary of state, who shall register each commission in a book to be kept for that purpose, specifying the office, name of officer, date of commission and term of office.

Disposition of moneys and fees.

1101. SEC. 4. All moneys and fees received by the secretary of state by virtue of his office, except his salary as such secretary of state, shall be paid by him into the state treasury on the first Monday of each month.

Appointment of deputy.

1102. SEC. 5. The secretary of state may appoint a deputy to act for him whenever he may deem it necessary, who shall have full authority to act in all things relating to the office; *Provided*, that the secretary shall be responsible for all acts of such deputy, and shall provide for his compensation without cost to the state.

ARTICLE III.

Duties of attorney general.

1103. SECTION 1. The attorney general shall attend in person at the seat of government during the session of the general assembly and the supreme court; and shall appear for the state, prosecute and defend all actions and proceedings, civil and criminal, in which the state shall be a party or interested, when required to do so by the governor or general assembly, and shall prosecute and defend for the state all causes in the supreme court in which the state is a party or interested.

Same.

1104. SEC. 2. It shall be the duty of the attorney general, at the request of the governor, the secretary of state, the treasurer or auditor, to prosecute and defend all suits relating to matters connected with their departments.

Opinions in writing on questions of law.

1105. SEC. 3. When requested, he shall give his opinion in writing upon all questions of law submitted to him by the general assembly, or either house thereof, governor, lieutenant governor, auditor, secretary of state, treasurer or superintendent of public instruction.

Drafts for contracts, forms, etc.

1106. SEC. 4. He shall when required, prepare drafts for contracts, forms and other writings which may be required for the use of the state, and shall report to the general assembly or governor when requested, upon any business pertaining to his office.

Disposition of state moneys received by him.

1107. SEC. 5. All moneys received by him belonging to the state, or received in his official capacity, shall be paid forthwith into the state treasury.

Records to be kept by.

1108. SEC. 6. He shall keep in proper books a record of all official opinions, and a register of all actions prosecuted and defended by him, and of all proceedings had in relation thereto, which book shall be delivered to his successor.

ARTICLE IV.

1109. SECTION 1. The state treasurer shall, on or before the second Tuesday in January after his election, and before entering upon the duties of his office, take and subscribe the oath required by the constitution, and give a bond to the state of Colorado in the sum of one hundred thousand dollars, with not less than three sureties, to be approved by the governor and attorney general, which bond shall be filed in the office of secretary of state. The governor, with the concurrence of the attorney general, whenever he deems the sureties on the bond of the state treasurer to be insufficient for the said sum of one hundred thousand dollars, may demand, and the state treasurer shall give, additional bonds and sureties, to be approved by the governor and attorney general. State treasurer; oath and bond.

1110. SEC. 2. The condition of such bond shall be in substance that the treasurer and all persons employed in his office shall faithfully discharge their respective duties and trusts, and that the said treasurer shall use all necessary and reasonable diligence and care in the safe keeping and lawful disposal of all sums of money, books, bonds, notes, papers, and all other things appertaining to said office, and which shall have or shall come to his hands, or to the hands of any person or persons employed by him, and that the said treasurer shall, upon reasonable notice, render a true account in the premises, whenever he shall be thereunto required by any provision of law in that behalf, or by the senate or house of representatives, and shall deliver to his successor in said office, or to any other person authorized by law to receive the same, all moneys, books, bonds, notes, papers, and all other things belonging to said office, and that all balances that shall appear against him shall be forthwith paid into the treasury of the state. Condition of bond.

1111. SEC. 3. The treasurer shall:

First—Receive and keep all moneys of the state not expressly required by law to be received and kept by some other person. Duties of state treasurer.

Second—Disburse the public moneys upon warrants drawn upon the treasury according to law, and not otherwise.

Third—Keep a just, true and comprehensive account of all moneys received and disbursed.

Fourth—Keep a just and true account of each head of appropriation made by law, and the disbursements made under the same.

Fifth—Render his accounts to the auditor for settlement quarterly, or oftener if required.

Sixth—Report to the governor at least twenty days preceding each regular session of the general assembly a detailed statement of the condition of the treasury and its operations for the two preceding fiscal years.

Seventh—Give information in writing to either house of the general assembly whenever required, upon any subject connected with the treasury, or touching any duty of his office.

Eighth—Perform all such other duties as may be required by law.

Receipts for moneys paid into state treasury.

1112. SEC. 4. The treasurer shall grant duplicate receipts under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

Cash book; how to be kept; to be open for inspection.

1113. SEC. 5. Wherever any county treasurer or other officer or person shall pay over any taxes or other public moneys to the state treasurer, such state treasurer shall forthwith enter the same in a cash book to be kept by him for that purpose at his office, and in each entry of any such moneys, he shall set down and state the amount of money, and the nature of the funds wherein the same are paid, whether gold or silver coin, United States treasury notes or other currency, state warrants, auditor's warrants, or other certificates or evidences of state indebtedness, and the amount of each of such several kinds of coin, treasury notes, bank bills, or warrants, or certificates of indebtedness, the date when, and the person by whom the same were paid. Every such cash book shall, at all reasonable hours of the day, be open to the inspection and examination of every person desiring to inspect the same.

1114. SEC. 6. The state treasurer shall, at the time of

every such payment, make out and deliver to the persons paying such moneys, a receipt therefor, in which he shall set forth all of the several matters required to be entered in such cash book. If the person paying such moneys be a public officer, every such receipt shall be in duplicate, and the officer receiving the same shall forthwith deliver one copy thereof, or transmit the same by mail, to the auditor of state, who shall file and preserve such receipt in his office.

Receipts to county treasurers, public officers or persons paying public money.

1115. SEC. 7. The state treasurer shall report to the auditor of state monthly, on the first day of each month, the amount of all moneys received by him during the preceding month, the name of the person from whom each of such sums was received, the date of such receipt, and the several kinds of coin, treasury notes, bank bills, auditor's warrants, or other like certificates, or evidences of indebtedness, in which the same were paid, and the amount of each kind; the amounts of his disbursements, specify by number the warrants paid and date of payment, and the amount of interest allowed and paid thereon, also the number and date of all warrants presented and registered in pursuance of section 9 of this article; such monthly reports shall by the auditor be filed and preserved in his office and the same shall at all reasonable hours be open to the examination of any person desiring to examine the same.

Monthly reports to state auditor; to be filed and preserved in office and open for inspection.

1116. SEC. 8. Every fund in the hands of the state treasurer for disbursement, shall be paid out in the order in which the warrants drawn thereon and payable out of the same, are presented for payment. *Provided*, that whenever a warrant shall be presented, if there shall be funds in the treasury to pay the same, and all other warrants which have been presented prior thereto, and still remaining unpaid, it shall be the duty of the treasurer to pay the same.

Order of payment of warrant.

1117. SEC. 9. The state treasurer shall keep in his office a book to be called the register of warrants, and wherein shall be set down and entered immediately upon the presentation thereof, every auditor's warrant presented to such treasurer for payment (whether the same be paid at the time of such presentation or not,) with the amount thereof, the name of the person to whom the same is by

Register of warrants; how to be kept; to be open for inspection.

the terms thereof payable, the name of the person by whom the same is presented, the number and date of such warrant or certificate, and the date of the presentation thereof for payment. Every warrant shall be entered in the order of the presentation thereof, and upon the line next following that whereon is entered the warrant presented last before it, and without any blank line intervening. Such "register of warrants" shall at all reasonable hours of the day, be open to the inspection and examination of every person desiring to inspect or examine the same.

Protest of warrants

1118. SEC. 10. Upon the presentation of any auditor's warrant for payment, the treasurer shall, if the same be not thereupon paid by him, indorse upon such warrant as follows :

"Presented (here insert date of presentation) no funds. This warrant draws interest from this date at the rate of 10 per cent. per annum.

State Treasurer."

The state treasurer shall sign said endorsement and redeliver to the bearer thereof.

Penalty for failure of state treasurer to perform duties of his office.

1119. SEC. 11. If any state treasurer shall fail, neglect or refuse to keep such cash book as required by this article, or shall fail, neglect or refuse to enter therein any sum of money which may be paid to him by virtue of his office, or shall wilfully make any false entry thereof, or fail, neglect or refuse to exhibit the same to any person desiring to inspect the same, or shall refuse to permit any person to examine such cash book at any reasonable hour of the day, or shall fail, neglect or refuse to issue such receipt or duplicate receipt as required by this article, or shall make any false receipt of any money received by him by virtue of his office, or shall fail, neglect or refuse to render such monthly report of moneys received by him by virtue of his office in any month as required by this article, or shall make any false report thereof, or shall fail, neglect or refuse to keep a "register of warrants" as required by this article, or shall fail, neglect or refuse to indorse such warrant as required by this article, or shall make any false entry of any such warrant in such register, or shall falsely indorse the same,

or shall fail, neglect or refuse to permit any person to inspect and examine such register at any reasonable hour of the day at his office, or shall refuse or neglect to pay any such warrant in the order in which the same ought to be paid, or shall pay any such warrant, there not then remaining in the treasury money sufficient to pay all warrants or orders drawn upon or payable out of the same fund and previously presented; *provided, however*, that nothing in this section shall be so construed as to prevent the treasurer from receiving state warrants from the county treasurers, in payment of taxes due the state, whether such warrant shall be registered or not, or whether there shall be sufficient money in the treasury to pay the same, or that the same may not be due in regular order as registered. Every such treasurer so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than fifty dollars, and not exceeding one thousand dollars, and imprisoned until such fine is paid; and upon any such conviction, the court may adjudge that the treasurer so convicted be removed from his office.

ARTICLE V.

Auditor of state; oath and bond.

1120. SECTION 1. The auditor of state shall on or before the second Tuesday in January, after his election, and before entering upon the duties of his office, take and subscribe the oath required by the constitution, and give a bond to the state of Colorado in the sum of thirty thousand dollars, conditioned for the faithful discharge of the duties of his office. Said bond shall be approved by the governor and attorney general, and be deposited in the office of the secretary of state.

Auditor general accountant of the state and custodian of account books, etc.

1121. SEC. 2. The auditor of state is the general accountant of the state, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the state and its revenue debt, and fiscal affairs not required by law to be placed in some other office or kept by some other person.

1122. SEC. 3. He shall digest, prepare and report to the governor at least twenty days preceding each regular session of the general assembly.

Biennial report to the governor; what to contain.

First—A detailed and full statement of the condition of the revenue and the amount of the expenditures for the two preceeding fiscal years.

Second—A full and detailed statement of the public debt.

Third—Estimates of the revenue and expenditures for the two succeeding fiscal years, and the probable amount of revenue derivable from the various sources of revenue.

Fourth—Such plans as he may deem expedient for the support of the public credit, for lessening the public expenses, for promoting frugality and economy in the public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the state.

Fifth—A tabular statement showing separately the whole amount of each appropriation of the money made by law, the amount paid under the same, and the balance unexpended.

Sixth—A tabular statement showing the amount of revenue chargeable to each county for the two preceding fiscal year, the aggregate amount of each object of taxation, and the balance due from said counties respectively.

1123. SEC. 4. He shall:

Duties of auditor of state.

First—Audit and settle all claims against the state, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers and persons.

Second—Draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law. He shall keep in his office a book to be called a "Register of Warrants," in which shall be entered in regular order, the number, date of issue, in whose favor, upon what fund drawn, amount and rate of interest of all warrants drawn by him on the state treasury.

Third—Express in the body of any warrant which he may draw upon the treasury for money, the particular fund appropriated by law out of which the same is to be paid.

Fourth—Audit, settle and adjust the accounts of the collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury.

Fifth—Keep an account between the state and the state treasury.

Sixth—Keep an account of all the debts and credits between the state and United States, and between the state and every other state, sovereignty, community, officer or person with whom the state may have dealings, and of any separate fund of the state authorized by law.

Seventh—Direct prosecution in the name of the state for all official delinquencies in relation to the assessment, collection and payment of the revenue, against all persons who by any means, become possessed of public money or property and fail to pay over or deliver the same, and against all debtors to the state.

Eighth—Give information in writing to the either house of the general assembly whenever required, upon any subject relating to the fiscal affairs of the state or touching any duty of his office.

Ninth—Perform all such other duties as may be required by law.

ARTICLE VI.

Auditing and settlement of claims against state.

1124. SECTION 1. Persons having claims against the state shall exhibit the same, with the evidence in support thereof, to the auditor to be audited, settled and allowed within two years after such claim shall accrue, and not afterwards.

When debts against state allowed as set-off in suits in behalf of state.

1125. SEC. 2. In all suits brought in behalf of the state, no debt shall be allowed against the state as a set-off but such as have been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved to the satisfaction of the court that the defendant at the time of the trial, is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor by absence from the state, sickness or unavoidable accident.

Examination of parties, witnesses, etc., in settlement of accounts

1126. SEC. 3. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses and others, on oath or affirmation, touching any matters material to be known in the settlement of such account, and for that purpose may issue subpœnas, and compel witnesses to attend before him and give evidence, in the same manner and by the

same means and by the same means allowed by law to courts of record.

Certified copies of accounts; fees for.

1127. SEC. 4. All accounts, vouchers and documents settled or to be settled by the auditor, shall be preserved in his office; and copies thereof authenticated by the official seal, shall be given to any person interested therein who may require the same and tender fees at the rate of fifteen cents per folio, and twenty-five cents for the use of the seal.

Warrants for payment of accounts, grants, salaries, etc.; how to be drawn.

1128. SEC. 5. In all cases of accounts audited and allowed against the state, and in all cases of grants, salaries, pay and expenses, allowed by law, the auditor shall draw a warrant on the treasurer for the amount due, in the form required by law: *Provided*, an appropriation has been previously made for such purpose.

Warrant not to be drawn unless appropriation made.

1129. SEC. 6. No warrant shall be drawn by the auditor, or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid under one head ever exceed the amount appropriated by law for that purpose.

In case of appeal from decision of auditor.

1130. SEC. 7. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account or credit, the auditor shall, at the request of such person, certify his decision with his reasons therefor, specifying the items rejected, if less than the whole, under the seal of his office, and refer the same to the general assembly.

Certificates of indebtedness.

1131. SEC. 8. In all cases where the laws recognize a claim for money against the state, and no appropriation shall have been made by law to pay the same, the auditor shall audit and adjust the same and give the claimant a certificate of the amount thereof, under his official seal if demanded, and shall report the same to the general assembly with as little delay as possible.

Report of delinquent collectors and holders of public moneys.

1132. SEC. 9. The auditor shall report to the general assembly within ten days after the commencement of each regular session, a list of all collectors of revenue, and other holders of public money, whose accounts have remained unsettled for the space of six months after they ought to have been settled according to law, and the reasons therefor.

ARTICLE VII.

1133. SECTION 1. The auditor and treasurer shall have free access to each other's offices for the inspection of all books, accounts and papers which they respectively contain, and free access to all the other offices of the state, for the inspection of such books, accounts and papers as concern any of their duties.

Auditor and treasurer to have free access to all state offices.

1134. SEC 2. The auditor and treasurer shall each keep a letter-book in which shall be recorded all official letters which they may write.

Official letter-book.

1135. SEC. 3. If the auditor shall knowingly issue any warrant upon the treasury, not authorized by law, he shall be deemed guilty of a misdemeanor in office, and upon conviction thereof, be fined in a sum four-fold the amount of such warrant, and imprisoned for any length of time not exceeding one year.

Penalty for issue of unauthorized warrants.

1136. SEC. 4. If the treasurer shall wilfully and unlawfully refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay to the holder thereof four-fold the amount of such warrant, to be recovered by action of debt against the treasurer and his securities on his official bond, or otherwise according to law, and the treasurer shall be deemed guilty of a misdemeanor in office, and upon conviction thereof shall be imprisoned for a time not exceeding two years.

Penalty for unlawfully refusing to pay warrant

1137. SEC. 5. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, or shall receive any fee or reward for the performance of any legal duty not allowed by law, or by color of his office shall knowingly do any act not authorized by law, or in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and upon conviction thereof, shall be fined in a sum not less than one hundred, and not more than one thousand dollars.

Penalty for neglect to perform lawful duties, by auditor or treasurer.

1138. SEC. 6. The amount of every account audited, adjusted and found due the state according to this act, with the interest thereon, is declared to be a lien upon the real estate of the person charged with the same from the time that suit shall be commenced for the recovery thereof.

Claim due state lien upon real estate of person owing.

Examination and verification of accounts of auditor and treasurer.

1139. SEC. 7. Previous to each regular session of the general assembly the secretary of state shall select and notify by giving ten days' notice to one member elected to the senate and two members elected to the house of representatives, to attend at the seat of government six days before the commencement of the session, for the purpose of examining and verifying the accounts of the auditor and treasurer.

Persons making examination to take oath

1140. SEC. 8. The members thus selected, before entering on such duties, shall take the oath required by the constitution of members of the general assembly, which shall be indorsed and certified on their certificates of election.

In what manner examination to be made.

1141. SEC. 9. The members selected, or a majority of them, shall make such examination and make to each house of the general assembly a report thereof; and if the general assembly approve the accounts so examined, thereupon they shall cause proper entries to be made in the books of the auditor's and treasurer's offices, showing the result of such examination, and immediately thereupon shall cause all vouchers which shall have been examined and allowed in such examination to be defaced by writing or stamping in large letters on the face thereof the word "cancelled." And all warrants drawn upon the treasurer by the auditor and paid by the treasurer shall be returned by said committee to the auditor and entered by him in the "registry of warrants" as cancelled.

Proceedings in case of death or resignation of treasurer

1142. SEC. 10. Upon the death or resignation of the treasurer., or upon a vacancy in that office from any other cause, the secretary of state, with two suitable persons to be appointed by warrant under the hand and seal of the governor, shall repair to the place or places where the moneys, papers and other things belonging to the treasury are usually kept, and having previously given notice to the late treasurer, his heirs, executors or administrators, and to his sureties, or one of them, shall seal up and secure in their presence, if they shall attend, all such moneys, papers and other things supposed to belong to the state.

1143. SEC. 11. They shall then give such representatives or sureties, if required by them, a true list of all

boxes and packages so sealed up and secured, and shall note on such list the places wherein the same are deposited, whereupon, as soon as it can be conveniently done and after notice to the parties mentioned in the preceding section, they shall cause the said boxes and packages to be examined and a true inventory to be taken of the said moneys, and of all bonds, notes, securities, books and other things appertaining to said office, which shall be required by such late treasurer or his representatives or sureties, or either of them.

List of boxes and packages sealed up to be given to representaves or sureties of treasurer.

Inventory

1144. SEC. 12. A copy of such inventory shall be deposited by them in the secretary's office, and any copies that may be required shall be given to any of the parties mentioned in the preceding section, and they shall safely keep all moneys and other effects mentioned as aforesaid until another treasurer shall be appointed, to whom, when qualified, they shall deliver over the same, taking duplicate receipts therefor, one of which receipts shall be deposited with the secretary, and the other shall be delivered to the said late treasurer, or his legal representatives or sureties, or one of them.

Receipts to be given by successor in office.

1145. SEC. 13. The persons appointed by the secretary to make the examination and verification of the accounts of the auditor and treasurer, and the persons appointed by the governor, as provided in section ten of this article, shall receive the same compensation as is allowed by law to the members of the general assembly during the time they may be engaged in such service.

Compensation of persons engaged in making examination

1146. SEC. 14. The auditor and treasurer shall each have power to administer all oaths and affirmations required by law, in matters touching the duties of their respective offices.

Power of auditor and treasurer to administer oaths

1147. SEC. 15. The auditor shall issue his warrant on the treasurer in any sum that the party entitled to the same may desire; *provided*, they shall not be less than five dollars, unless the sum due is less than that amount. All warrants drawn by the auditor on the treasury of the state shall be in the following form:

Issue of warrants; form.

No. ——. "STATE OF COLORADO, —— ——.

Treasurer of the state of Colorado, pay to ——————, or order, ———— dollars, out of any money in the treasury not otherwise appropriated, (here state in brief the account on which such warrant is issued,) and charge the same to ——————, and this shall be your voucher.

Issued ——, 18—. Signed, ——————,
Auditor of the state of Colorado."

Rate of interest on warrants

1148. SEC. 16. All state warrants issued by the proper authorities of the state shall draw interest from and after the date of their presentation, at the rate of ten per cent. per annum until the time directed in next succeeding section.

Record and payment of protested warrants.

1149. SEC. 17. The treasurer shall keep a record of the number and amount of the warrants so presented and indorsed for non-payment, and when there are funds in the treasury for the payment to an account [of an amount] sufficient to render it advisable, he shall give notice to what number of warrants the funds will extend and which he will pay, by the insertion in a newspaper printed at the seat of government. At the expiration of thirty days from the day of the last insertion, interest on the warrants so named as being payable shall cease. When interest is paid upon the warrants, the amount paid shall be indorsed upon the warrant and be signed by the party receiving it.

Fiscal year.

1150. SEC. 18. The fiscal year shall be deemed to commence on the first day of December, and end on the thirtieth day of November, in each year.

Official seal of auditor and treasurer.

1151. SEC. 19. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers and documents certified from either of such officers respectively.

Penalty for default of auditor or treasurer in making reports.

1152. SEC. 20. For default in making and rendering the reports hereinbefore required, every auditor and treasurer shall forfeit the sum of one hundred dollars, and the like sum for every day during which he shall be in default in making such report after the organization of the general assembly

Repeal.

1153. SEC. 21. Chapter nine of the revised statutes of Colorado, and all acts and parts of acts inconsistent with this act are hereby repealed.

1154. SEC. 22. Inasmuch as the duties of the present state officers are not prescribed by law, this general assembly is of the opinion that an emergency exists requiring the immediate passage of this act, therefore this act shall take effect and be in force from and after its passage. Emergency.

Approved, February 27, 1877.

CHAPTER XXXIV.

FEES.

AN ACT DISPOSING OF UNCLAIMED WITNESS FEES.

[Revised Statutes, Chapter XXXI.]

1155. SECTION 1. That hereafter all moneys collected by any clerk of the district court of any of the judicial districts and county judges of this state, as witness fees, that shall have remained in the possession of said clerk for a period of three months, shall be paid by the clerk into the treasury of the county for which said court is held. Disposition of unclaimed witness fees.

1156. SEC. 2. That it shall be the duty of the clerk of every such court in this state, to present, between the first and tenth days of the months of April and October, of each and every year, a detailed certified statement of all such fees collected by him and uncalled for by the owner, to the county treasurer of the county in which he resides, and to pay the amount over to the treasurer and take his receipt for the same. Semi-annual detailed statement to be made by clerks.

1157. SEC. 3. That if any person entitled to witness fees in any suit in the district or county courts shall, within one year from the time his right to such fees accrued, make application to the clerk of the district court or the county judge, said clerk or judge shall give him a certificate setting forth the amount due to said witness, which amount shall be paid by the county treasurer upon the presentation of said certificate. How fees paid into county treasury may be recovered.

1158. SEC. 4. Any such clerk failing to comply with the provisions of this act, shall be liable to the county in which he resides, in the penal sum of five hundred dollars for each offense, to be collected as other like fines. Penalty for failure of clerk to comply with these provisions.

AN ACT TO SUPPRESS THE TAKING OF ILLEGAL FEES BY CERTAIN OFFICERS THEREIN NAMED.

[Session Laws, 1874.]

1159. SECTION 1. Any judge, justice of the peace, clerk sheriff, constable, city marshal, or other public officer, who for the performance of an official duty, for which a fee or compensation is allowed or provided by law, shall wilfully and knowingly demand or receive any greater fee or compensation either in money or other thing of value than what is allowed or provided by law for the same, or who shall wilfully and knowingly demand or receive any such fee or compensation where no fee or compensation whatever is authorized or prescribed by law, shall be guilty of a misdemeanor, and upon conviction thereof shall be confined in jail not less than one nor more than six months, and shall be fined not less than one hundred nor more than five hundred dollars, besides being liable on a civil action to the person or persons from whom such fee or compensation is thus knowingly and illegally demanded or received, for three times the value or amount thereof; and upon the examination or trial of such offense, the defendant shall be presumed to have acted wilfully and knowingly until the contrary is shown.

Penalty for public officer demanding or receiving illegal fee; liable to civil action.

1160. SEC. 2. Any judge, justice of the peace, clerk, sheriff, constable, city marshal, or other public officer authorized by law to issue, serve or execute any execution, or other legal process, and who shall either charge or receive any money or other thing of value for omitting or delaying to issue, serve or execute such process, or to perform any other duty whatever appertaining to his particular office, shall be guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail not less than one nor more than six months, and shall be fined not less than one hundred nor more than five hundred dollars; *provided, however*, that nothing in this act contained shall debar the said officers of the right to demand and receive their legitimate fees in advance.

Penalty for public officer receiving compensation for omitting to issue, serve or execute legal process

Right to demand fees in advance.

AN ACT TO FIX AND REGULATE THE FEES CHARGEABLE BY COUNTY, PRECINCT AND OTHER OFFICERS.

Be it enacted by the General Assembly of the State of Colorado:

1161. SECTION 1. It shall be the duty of the secretary of state to collect as fees the following sums of money for papers officially executed, and other official work which may be done in his office, that is to say: For each military commission, two dollars and fifty cents; for each notary public's commission, five dollars; for each foreign commission, five dollars; for any other commission or appointment to which the seal of the state shall be affixed, two dollars and fifty cents; for each official certificate, one dollar; for administering each oath, fifty cents; for filing and recording each certificate of incorporation, not exceeding five folios of one hundred words, two dollars and fifty cents; and for each additional folio, fifteen cents; for all transcripts or copies of papers and records, fifteen cents per folio of one hundred words; and he shall not deliver any such commission, or file or record any such certificate, or do any such official work until the fee or sum so fixed to be collected therefor, shall first be paid to him. He shall pay all fees and sums of moneys so collected by him, to the state treasurer monthly, taking the treasurer's receipt for the same, and shall make an itemized statement of all such collections, showing the amounts thereof, in his annual report for each year.

Fees of secretary of state; to be paid into state treasury.

1162. SEC. 2. The supreme court is hereby authorized to fix such fees for the services of the clerk of said court, in causes pending therein, as to the court shall seem proper; such fees to be paid by the parties to a cause pursuant to law and the order of the court; if such fees so fixed shall exceed the sum of two thousand (2000) dollars annually, the excess thereof shall be paid into the state treasury by said clerk at the close of each fiscal year.

Fees of clerk supreme court to be fixed by court; excess over $2000 to be paid into state treasury.

1163. SEC. 3. The fees of district attorneys shall be as follows: In all civil cases a docket fee of five dollars; for all collections for the state, when the amount collected is under five hundred dollars, five per cent.; over five hundred dollars, two and one-half per cent.; for every criminal trial or examination before a justice of the peace, or district

Fees of district attorney.

judge, when sitting in the capacity of an examining magistrate, five dollars; in cases when more than one day is consumed in such trial or examination by change of venue or otherwise, per day, five dollars; for the conviction in district court of each defendant in cases of misdemeanor, ten dollars; for the conviction in district court of each defendant in cases of felonies, fifteen dollars; for the conviction or trial by jury of each defendant in capital cases, twenty-five dollars; for attending all cases in the supreme court wherein the people of the state or any county, is a party in interest, for each hearing in each case, fifteen dollars; and per diem for each day necessarily employed in attendance upon a cause in said supreme court, ten dollars, to be paid by the county wherein such cause was originally pending; for drawing each indictment, five dollars; *provided*, no fees shall be allowed for drawing all indictments which may be quashed.

Fees of notaries public.

1164. SEC. 4. The fees of notaries public shall be as follows: For noting a bond, bill of exchange, or promissory note for protest, fifty cents; for each protest and record of the same, seventy-five cents; for each notice of protest, fifty cents; for each certificate and seal, fifty cents; for one acknowledgment of a deed or other instrument in writing, fifty cents; for each additional acknowledgment, twenty-five cents; for taking depositions, per folio of one hundred words, fifteen cents; for swearing any person to an affidavit, with certificate and seal, twenty-five cents; for all other services, the same fees as justices of the peace for like services.

Jurors' fees

1165. SEC. 5. Jurors' fees shall be as follows: In district and county courts, per day, two dollars and fifty cents; attending inquest over dead body, to be paid out of the county treasury, two dollars and fifty cents; attending before justices of the peace, two dollars; mileage for each mile necessarily traveled, fifteen (15) cents.

Witness fees.

1166. SEC. 6. Witness fees shall be as follows: For attending in any court of record, or before a commissioner or referee, two dollars and fifty cents per day; or before any officer pursuant to law, including justices of the peace, two dollars per day, and twenty cents per mile actually

traveled in going from his place of residence to the place named in the subpœna. No officer of the courts, including clerks, sheriffs, bailiffs and jurors, shall be entitled to witness fees before a court where he is officiating, except for the day when used as a witness, unless his official capacity shall end before so being used; *provided*, that no witness before a coroner, justice of the peace, commissioner or referee shall be allowed fees unless such witness shall claim the same before the adjournment of the court; and no witness in civil cases, in any court of record, shall be allowed fees unless such witness shall claim the same, under oath, before the adjournment (for the term) of such court, and only then for the number of days such witness shall actually attend such court in the capacity of witness.

Fees of judges and clerks of elections, and messenger carrying returns.

1167. SEC. 7. The fees of judges and clerks of election shall be as follows: Each judge and clerk of elections shall be allowed two dollars and fifty cents ($2.50) per day for each day's service as such judge or clerk, to be paid out of the county treasury. Each messenger carrying election returns to the clerk of said county shall be entitled to the same *per diem* as the judges and clerks, and ten (10) cents per mile for the distance necessarily traveled in going to and returning from the office of said county clerk.

Publishers' fees.

1168. SEC. 8. Publishers of newspapers in this state shall be entitled to the following fees for the publication of all legal advertisements: For the first insertion of each folio of one hundred words, seventy-five (75) cents; for each subsequent insertion, forty (40) cents.

Fees of masters in chancery, commissioners and referees.

1169. SEC. 9. Masters in chancery, court commissioners and referees shall be entitled to the following fees: For making sale of real estate in pursuance of the order or decree of a court, making certificate of such sale and deed thereon, the same fees as allowed to sheriffs for making sale of real estate for an execution in the county where such master resides; for taking testimony in any case upon an order of reference, the same fees as is allowed justices of the peace for taking depositions; for report on any such case, three dollars; for hearing each application for a writ of injunction or other writ, and deciding the same, five dollars; for attendance to take depositions at request of any

party, whether depositions are taken or not, per day, two dollars.

Division of counties into three classes

1170. SEC. 10. That for the purpose of providing for and regulating the compensation and fees of county and precinct officers the several counties of the state shall be classified with reference to population, and divided into three classes as follows, namely: The county of Arapahoe shall constitute the *first class;* the counties of Boulder, Clear Creek, Las Animas, Gilpin, Jefferson, Weld, Pueblo, Fremont, El Paso, Bent, Conejos, Douglas, Larimer and Custer shall constitute the *second class;* and the counties of Costilla, Lake, Park, Saguache, Summit, Grand, Elbert, La Plata, San Juan, Rio Grande, Hinsdale, Huerfano, Gunnison, Routt and Ouray shall constitute the *third class.*

1171. SEC. 11. That the following fees are hereby established as legal fees for officers in a county of the first class, namely:

FEES OF CLERKS OF DISTRICT AND COUNTY COURTS.

First class, fees of clerks of district and county courts

For filing each paper required to be filed, ten (10) cents.

For every summons or other process, not herein expressly named, and sealing the same, sixty-five (65) cents.

For each subpœna (provided that only one subpœna shall be issued for every four witnesses, unless expressly requested,) forty (40) cents.

For taking bond for costs, forty (40) cents.

For filing papers on appeal from justice of the peace, taking appeal bond and issuing *supersedeas* thereon, one (1) dollar.

For each entering of a suit on docket for trial, ten (10) cents.

For entering each order or rule of court for continuance, or any order, rule or proceeding of court actually entered in the progress of a suit, and counting the whole entry for one, fifty (50) cents.

For each discontinuance, *retraxit* or non-suit, twenty-five (25) cents.

For each *dedimus* to take deposition, one (1) dollar.

For calling and swearing each jury, twenty-five (25) cents.

For swearing each witness in court, ten (10) cents.

For swearing any person to an affidavit and filing the same, twenty (20) cents.

For entering each final judgment in a case, twenty-five (25) cents.

For entering each decree in chancery, ten (10) cents per folio.

For issuing each writ of *habeas corpus*, *certiorari* or *procedendo*, seventy-five (75) cents.

For issuing each writ of injunction, *quo warranto* or *mandamus*, one (1) dollar and fifty (50) cents.

For issuing each writ of attachment or replevin, one (1) dollar.

For assessing the damages on any bond, note, or other instrument for the payment of money by order of the court, and making a report thereof, and filing said report, fifty (50) cents.

For entering special bail, if secured, in each case twenty-five (25) cents.

For swearing officer to take charge of jury, ten (10) cents.

For issuing an execution, one (1) dollar.

For docketing the same, ten (10) cents.

For entering the sheriff's return on each execution, per folio, fifteen (15) cents.

For entering the satisfaction of judgment, twenty-five (25) cents.

For entering the report of commissioners or referees, or the award of arbitrators, and all other special entries, per folio, fifteen (15) cents.

For each certificate and seal, other than the process of court, fifty (50) cents.

For taking and approving appeal, or any other bond, each, one (1) dollar.

For entering the appearance of attorney, fifteen (15) cents.

For each attachment of a witness or other person, fifty (50) cents.

For each *venire facias*, seventy-five (75) cents.

For making bill of costs for each execution, entering the

same of record in the fee book, being one charge, fifty (50) cents.

For making a complete record, for each folio, fifteen (15) cents.

For making a copy of any paper in a case, per folio, fifteen (15) cents.

For certifying and sealing the same when required, fifty (50) cents.

For taking deposition, per folio, and certifying the same, fifteen (15) cents.

For taking acknowledgment of deed, power of attorney, or other instrument in writing, and certifying and sealing the same, fifty (50) cents.

For filing and recording declaration of intent to become a citizen of the United States, one dollar and fifty cents ($1.50.)

For final naturalization, including oath, recording copy, certificate and seal, two dollars and fifty cents ($2.50.)

For taking each recognizance in courts and entering the same of record, fifty (50) cents.

For arraigning prisoners at the bar, twenty-five (25) cents.

For entering judgment of conviction, fifty (50) cents.

For copy of indictment, when required, per folio, ten (10) cents.

For copy of lists of grand or petit jurors, when required in a criminal case, fifteen (15) cents.

For filing papers on appeal from county court, one (1) dollar.

For entering attorney on rolls, administering oath, certificate and seal, three (3) dollars.

SHERIFF FEES.

First class; sheriffs' fees.

1172. SEC. 12. For serving and returning summons on each party served, one (1) dollar.

For serving and returning subpœna on each witness, forty (40) cents.

For serving writ of attachment or replevin, two (2) dollars.

For summoning each juror, forty (40) cents.

For returning each writ of subpœna or other process not served, twenty-five (25) cents.

For advertising property for sale, besides actual expenses, fifty (50) cents.

Mileage for each mile actually and necessarily traveled, fifteen (15) cents.

For levying execution, one (1) dollar and fifty (50) cents.

For serving and returning *scire facias*, seventy-five (75) cents.

For committing or discharging prisoners to or from jail, thirty-five (35) cents.

For dieting prisoners per day, such reasonable compensation as shall be allowed by the board of county commissioners, not to exceed fifty (50) cents *per diem.*

For attending before any judge with prisoners with writ of *habeas corpus*, one (1) dollar.

For each mile traveled in taking prisoners before any judge on writ of *habeas corpus*, fifteen (15) cents.

For serving writ of possession with aid *posse comitatus*, five (5) dollars, with actual expenses incurred in executing such writ.

For serving same without aid, one dollar and twenty-five cents ($1.25).

For attending district or county court when in session, per day, two dollars and fifty cents ($2.50,) to be paid out of the county treasury.

For making, executing and acknowledging deed of sale of real estate, two dollars and twenty-five cents ($2.25).

For making certificate of sale, previous to execution of deed, two (2) dollars.

For taking bond in any case, one (1) dollar.

For executing *capias* or warrant in criminal cases on each person named therein, seventy-five (75) cents.

For making and recording certificate of levy in attachment and other cases, two (2) dollars.

For transporting prisoners, per mile, ten (10) cents, besides actual expenses exclusive of railroad and team fare necessarily incurred.

Commissions on money collected without sale, on all sums under five hundred (500) dollars, two (2) per cent.;

on all sums over five hundred (500) dollars and under one thousand (1000) dollars, one and one-half (1½) per cent., and all sums over one thousand (1000) dollars, one (1) per cent.

Commissions on money collected by sale, on all sums under five hundred (500) dollars, three per cent.; on all sums over five hundred (500) dollars and under one thousand (1000) two and one-half (2½) per cent.; on all sums over one thousand (1000) dollars, one per cent.

For executing sentence of death, fifty dollars ($50,) together with actual expenses incurred in carying out such sentence of death, to be paid out of the county treasury.

For pursuing and capturing each person charged with the commission of any crime denominated a felony, beyond the limits of said county, in addition to the mileage allowed by law, the sum of two (2) dollars per day, to be paid out of the county treasury.

Constables' fees for pursuing, capturing, etc., criminals.

The constable shall be entitled to the same fees for pursuing, capturing and transporting criminals as is now provided for sheriffs in this act, to be paid out of the county treasury.

COUNTY TREASURER'S FEES.

First class; county treasurers' fees.

1173. SEC. 13. The county treasurer shall receive the following compensation:

One and one-half per cent. upon all moneys received by him for taxes of every kind, except school taxes, which shall be one (1) per cent.

For receiving all moneys other than taxes, one and one-half (1½) per cent.

COUNTY CLERK'S FEES.

First class, fees of county clerk.

1174. SEC. 14; The county clerk shall be and he is hereby authorized to receive the same fees as district clerks for like services.

For entering each order, fifteen (15) cents per folio.

For administering each oath, ten (10) cents.

For each certificate and seal, fifty (50) cents.

Each bond and license, one (1) dollar.

For advertisement, including copy for a newspaper publication, seventy-five (75) cents.

For every certificate of magistracy under seal, fifty (50) cents.

For every instrument authorized to be recorded, first one hundred (100) words, thirty (30) cents.

For each additional folio, fifteen (15) cents.

For each entry in index, ten (10) cents.

For certificate of record, ten (10) cents.

Taking acknowlegements, fifty (50) cents.

Copies of record, per one hundred (100) words, ten (10) cents.

For making search of records where no certificate is given, twenty-five (25) cents.

For recording town plats, for one hundred (100) lots, or less, three dollars and fifty cents ($3.50.)

For each additional lot, one (1) cent.

For making abstracts for the first five conveyances or entries, or less, each forty (40) cents.

For each additional conveyance or entry, twenty (20) cents.

FEES OF JUSTICES OF THE PEACE.

1175. SEC. 15. The fees of justices of the peace shall be as follows: First class; fees of justices of the peace.

For docketing each case, fifteen (15) cents.

For issuing summons for one person sixty-five (65) cents; for each additional person named therein, twenty (20) cents.

For each order of arrest, forty (40) cents.

For each attachment against property, sixty-five (65) cents.

For attachment against persons for contempt, forty (40) cents.

For each *mittimus*, fifty (50) cents.

For subpœna for one person forty (40) cents; for each additional person, ten (10) cents.

For each *venire*, fifty (50) cents.

For each execution or order of sale, fifty (50) cents.

For each writ of restitution, sixty (60) cents.

For warrant for one person, criminal, fifty (50) cents; for each additional person, twenty-five (25) cents.

For order on jailer for person or persons, twenty-five (25) cents.

For writs of forcible entry or detainer, seventy-five (75) cents.

For every other writ required by law, fifty (50) cents.

For hearing each preliminary or dilatory motion, twenty-five (25) cents.

For judgments on merits, or for costs, fifty (50) cents.

For dismission or continuance, forty (40) cents.

For taking verdict, twenty-five (25) cents.

For making up docket, each one hundred (100) words, fifteen (15) cents.

For each certificate, twenty-five (25) cents.

For transcript of docket, or other writing, each one hundred (100) words, fifteen (15) cents.

For swearing jury, twenty-five (25) cents.

For administering each oath, ten (10) cents.

For filing each paper, ten (10) cents.

For taking each bond, or undertaking, forty (40) cents.

For appointing special constable, ten (10) cents.

For taking each acknowledgment, fifty (50) cents.

For trying each cause of forcible entry and detainer, one (1) dollar.

For trying each criminal case, or misdemeanor, seventy-five (75) cents.

For trying each civil cause, seventy-five (75) cents.

For taking depositions, each one hundred (100) words, fifteen (15) cents.

For writing affidavit, or other writing not provided for, each one hundred (100) words, fifteen (15) cents.

For performing duties as coroner, same fees as coroner.

For marrying each couple and making returns, three (3) dollars.

For issuing attachment or replevin notice, forty (40) cents each.

In all criminal trials and examinations of persons on charges of criminal offenses against the laws of this state, it shall be the duty of justices of the peace in a county of the first class, to tax up the costs in each case according to the provisions of this act, and it is made the duty of all constables and the county attorney of said county, to so far as possible, collect such costs from the parties liable to pay

the same, which said costs, except those of district attorney, constables and sheriff, when collected, shall be paid quarterly by said justice into the county treasury for the benefit of the county. The county commissioners of said county shall allow justices of the peace of said county out of the county treasury, for each month in the year, to be paid quarterly, a sum equal to the amount of their fees and costs so taxed and reported by them in such criminals trials and examinations: *Provided*, that the sum paid any justice of the peace out of the county treasury, for such costs and fees, shall not in any month exceed the sum of one hundred dollars.

FEES OF CONSTABLES.

1176. SEC. 16. The fees of constables in counties of the first class, shall be as follows, to wit: First class; fees of constables.

For serving and returning each warrant or other writ not herein provided for, on each person therein named, seventy-five (75) cents.

For serving and returning each summons on each person, fifty (50) cents.

For serving and returning each subpœna on each person, thirty-five (35) cents.

For serving and returning attachment, seventy-five (75) cents.

For serving and returning writs of replevin and appointing appraisers, one (1) dollar.

For returning each process not served, twenty-five (25) cents.

For serving, returning and levying executions, fifty (50) cents.

For conveying prisoners to and from jail, inclusive, fifty (50) cents.

For serving writ, with aid of *possè comitatus*, five (5) dollars.

For taking replevin or other bond, fifty (50) cents.

For each mile actually traveled in all cases, fifteen (15) cents.

For transporting prisoners, per mile, twenty (20) cents.

For attending at each jury trial occupying one-half (½) day, one (1) dollar.

For each additional six (6) hours, fifty (50) cents.

For attending on each trial or examination, without a jury, one (1) dollar.

For commissions on money collected without sale, two and one-half (2½) per cent. on all sums of one hundred (100) dollars or under.

On all sums over one hundred (100) dollars, one and one-half (1½) per cent.

On all sums of money collected by sale, of sums of one hundred (100) dollars and under, five (5) per cent; and on all sums over one hundred (100) dollars, three (3) per cent.

FEES OF COUNTY JUDGE.

First class; fees of county judges.

1177. SEC. 17. The county judge in a county of the first class, shall receive the following fees for services performed by him:

For appointing an executor, administrator, guardian, conservator or trustee, three (3) dollars.

For granting letters testamentary, or of administration, and affixing the seal thereto, one dollar and fifty cents, ($1.50.)

Taking bond of executor, administrator or guardian, and approving the same, one (1) dollar.

For administering oath to each executor, administrator or guardian, twenty-five (25) cents.

Taking proof of will or codicil, two (2) dollars.

For recording any will, codicil or other paper, for each one hundred (100) words, fifteen (15) cents.

For examining each inventory, bill of sale or account current, filed by an executor or administrator, seventy-five (75) cents.

For recording the settlement of executors or administrators, fifteen (15) cents per folio of one hundred (100) words.

For all copies of orders, papers and proceedings, fifteen (15) cents per folio of one hundred (100) words.

For each order limiting the time for exhibiting the claims of creditors, fifty (50) cents.

For each order of distribution, one (1) dollar.

For exemplified copies of records, per folio of one hundred (100) words, fifteen (15) cents.

Making order for publication, twenty-five (25) cents.

Certifying any will, paper, proceeding or order, twenty-five (25) cents.

Allowing appeal to district court, fifty (50) cents.

Issuing each writ, summons or citation, fifty (50) cents.

Administering oath and certificate thereof, twenty-five (25) cents.

Administering oath to witness, ten (10) cents.

Issuing subpœna, forty (40) cents.

Entering each order, decree or judgment not herein enumerated, twenty-five (25) cents.

Filing any paper pertaining to any estate, ten (10) cents.

Granting letters of guardianship or trusteeship, two (2) dollars.

Taking and approving any bond not heretofore specified, fifty (50) cents.

Revoking letters testamentary, of administration or guardianship, one (1) dollar.

Administering oath to jury, twenty-five (25) cents.

Taking acknowledgments of interests, fifty (50) cents.

Issuing *venire* for jury, twenty-five (25) cents.

Entering verdict, twenty-five (25) cents.

Allowing or disallowing demands against an estate, and recording the same, twenty-five (25) cents.

Entering order of continuance, twenty-five (25) cents.

Decree in final settlement of an estate, two (2) dollars.

For each hearing on petition for partition of real estate or sale of real estate, one (1) dollar.

For making and entering each order for the sale of personal property, one (1) dollar.

For making and entering each order or decree for the sale or partition of real estate, one (1) dollar.

For solemnizing marriages, three (3) dollars.

For each trial or hearing of a cause instituted in the county court, for each day occupied by him in such hearing or trial, to be taxed as costs again the unsuccessful party; three (3) dollars.

For hearing each contested claim against estate and entering decision in same, one (1) dollar.

For each hearing on application to revoke letters testa-

mentary, of administration, guardianship, conservatorship, or trustee, to be taxed against the losing party, one (1) dollar.

COUNTY COMMISSIONERS' FEES.

First class; fees of county commissioners.

1178. SEC. 18. The county commissioners of counties of the first-class, shall be allowed five (5) dollars per day for each day spent in the performance of their duties as commissioners, and fifteen (15) cents per mile for the distance actually traveled in going to and returning from the place of meeting. The chairman of the board of county commissioners of said county, shall be *ex-officio* superintendent of the poor, and shall receive as compensation for his services as such superintendent, the addition [additional] sum of five hundred (500) dollars per annum, payable monthly in the manner provided by law for the payment of other county officers. *Provided*, that if the chairman of the said board shall, for a time, be a non-resident of the county seat of such county, the member of said board holding the oldest commission or certificate of election, and being a resident of the county seat, shall act as such superintendent, and shall for the time being receive the above compensation therefor.

FEES FOR CORONER.

First class; coroners' fees.

1179. SEC. 19. Coroners shall be allowed five (5) dollars per day for each day actually employed in making an inquest, and fifteen (15) cents per mile for each mile actually traveled in going to and returning from the place of inquest, to be paid by the county. For all services performed in the place of the sheriff, the same fees as are allowed to the sheriff for his services.

1180. SEC. 20. That the following fees are hereby established as legal fees for officers in counties of the second class, to-wit:

FEES OF CLERKS OF DISTRICT AND COUNTY COURTS.

Second class; fees of clerks of district and county courts.

For filing each paper required to be filed, twelve and one-half (12½) cents.

For every summons or other process, not herein expressly named, and sealing the same, one (1) dollar.

For each subpœna (provided that only one subpœna shall be issued for every four witnesses, unless expressly requested,) sixty (60) cents.

For taking bond for costs, fifty (50) cents.

For filing papers on appeal from justice of the peace, taking appeal bond and issuing *supersedeas* thereon, one dollar and fifty (1.50) cents.

For each entering of a suit on docket for trial, twenty (20) cents.

For entering each order or rule of court for continuance, or any order, rule or proceeding of court actually entered in the progress of a suit, and counting the whole entry for one, sixty (60) cents.

For each discontinuance, *retraxit* or non-suit, forty (40) cents.

For each dedimus to take deposition, one dollar and fifty (1.50) cents.

For calling and swearing each jury, thirty-five (35) cents.

For swearing each witness in court, twelve and one-half (12½) cents.

For swearing any person to an affidavit and filing the same, twenty-five (25) cents.

For entering each final judgment in a case, fifty (50) cents.

For entering each decree in chancery, fifteen (15) cents per folio.

For issuing each writ of *habeas corpus*, *certiorari* or *procedendo*, one (1) dollar.

For issuing each writ of injunction, *quo warranto* or *mandamus*, one (1) dollar and seventy-five (75) cents.

For issuing each writ of attachment or replevin, one (1) dollar and fifty (50) cents.

For assessing the damages on any bond, note, or other instrument for the payment of money, by order of the court, and making a report thereof and filing said report, seventy-five (75) cents.

For entering special bail, if secured, in each case, forty (40) cents.

For swearing officer to take charge of jury, fifteen (15) cents.

For issuing an execution, one (1) dollar and twenty-five (25) cents.

For docketing the same, fifteen (15) cents.

For entering the sheriff's return on each execution, per folio, twenty (20) cents.

For entering the satisfaction of judgment, twenty-five (25) cents.

For entering the report of commissioners or referees, or the award of arbitrators, and all other special entries, per folio, fifteen (15) cents.

For each certificate and seal, other than the process of court, seventy-five (75) cents.

For taking and approving appeal, or any other bond, each, one (1) dollar and twenty-five (25) cents.

For entering the appearance of attorney, twenty (20) cents.

For each attachment of a witness or other person, seventy-five (75) cents.

For each *venire facias*, one (1) dollar and ten (10) cents.

For making bill of costs for each execution, entering the same of record in the fee book, being one charge, seventy-five (75) cents.

For making a complete record, for each folio, fifteen (15) cents.

For making a copy of any paper in a case, per folio, fifteen (15) cents.

For certifying and sealing the same when required, seventy-five (75) cents.

For taking deposition, per folio, and certifying the same, fifteen (15) cents.

For taking acknowledgment of deed, power of attorney, or other instrument in writing, and certifying and sealing the same, seventy-five (75) cents.

For filing and recording declaration of intent to become a citizen of the United States, one (1) dollar and twenty-five (25) cents.

For final naturalization, including oath, recording copy, certificate and seal, three (3) dollars and fifty (50) cents.

For taking each recognizance in courts, and entering the same of record, seventy-five (75) cents.

For arraigning prisoners at the bar, thirty-five (35) cents.

For entering judgment of conviction, seventy-five (75) cents.

For copy of indictment, when required, per folio, fifteen (15) cents.

For copy of lists of grand or petit jurors, when required in a criminal case, twenty (20) cents.

For filing papers on appeal from county court, one (1) dollar.

For entering attorney on rolls, administering oath, certificate and seal, four (4) dollars.

For entering discharge of recognizance, twenty (20) cents.

SHERIFF'S FEES.

1181. SEC. 21. For serving and returning summons, or other writ not herein specified, on each party, one (1) dollar and twenty-five (25) cents. Second class; sheriff's fees.

For serving and returning subpœna on each witness, sixty (60) cents.

For serving and returning a writ of attachment or of replevin, two (2) dollars.

For summoning each juror, fifty (50) cents.

For advertising property for sale, besides actual expenses, seventy-five (75) cents.

For returning each writ or other process not served, fifty (50) cents.

Mileage for each mile necessarily traveled, fifteen (15) cents.

For levying execution, one (1) dollar and fifty (50) cents.

For serving and returning *scire facias*, one (1) dollar and ten (10) cents.

For committing or discharging prisoners to and from jail, fifty (50) cents.

For dieting prisoners per day, such reasonable compensation as shall be allowed by the board of county commissioners, not to exceed one (1) dollar per diem.

For attending before any judge with prisoners with writ of *habeas corpus*, one (1) dollar and twenty-five (25) cents.

For each mile traveled in taking prisoners before any judge or writ of *habeas corpus*, fifteen (15) cents.

For serving writ of possession with aid of *posse comitatus*, five (5) dollars, with actual expenses incurred in executing such writ.

For serving same without aid, two (2) dollars and twenty-five (25) cents.

For attending district or county court when in session, per day, (3) dollars and twenty-five (25) cents, to be paid out of the county treasury.

For executing, making and acknowledging deed of sale of real estate, three (3) dollars.

For making certificate of sale, previous to execution of deed, two (2) dollars.

For taking bond in any case, one (1) dollar and twenty-five (25) cents.

For executing *capias* or warrant in criminal cases on each person named therein, one (1) dollar.

For making and recording certificate of levy in attachment and other cases, two (2) dollars.

For transporting prisoners, per mile, twenty (20) cents, besides actual expenses, not including railroad fare and team hire, necessarily incurred.

Commissions on money collected without sale, on all sums under five hundred (500) dollars, two and one-half (2½) per cent; on all sums over five hundred (500) dollars, and under one thousand (1,000,) one and a half (1½) per cent.; and all sums over one thousand (1,000) dollars, one (1) per cent. *Provided*, that such commissions shall in no one case exceed the sum of thirty (30) dollars.

Commissions on money collected by sale, on all sums under five hundred (500) dollars, four and one-half (4½) per cent.; on all sums over five hundred (500) dollars and under one thousand (1,000) dollars, three and one-half (3½) per cent.; on all sums over one thousand (1,000) dollars, one and a half (1½) per cent. *Provided*, that such commission shall in no one case exceed the sum of fifty (50) dollars.

For executing sentence of death, fifty dollars ($50,) together with actual expenses incurred in carrying out such sentence of death, to be paid out of the county treasury.

For pursuing and capturing each person charged with the

commission of any crime denominated a felony, beyond the limits of said county, in addition to the mileage allowed by law, the sum of two and one-half (2½) dollars per day, to be paid out of the county treasury.

Fees of constable for pursuing, capturing, etc., criminals.

The constable shall be entitled to the same fees for pursuing, capturing and transporting criminals as is now provided for sheriffs in this class, to be paid out of the county treasury.

COUNTY TREASURER'S FEES.

Second class; fees of county treasurers.

1182. SEC. 22. The county treasurer shall receive the following compensation:

Three (3) per cent. upon all moneys received by him for taxes of every kind, excepting school taxes, which shall be one (1) per cent., which per cent. may be increased by the county commissioners, but not above four and one-half (4½) per cent.

For receiving all moneys other than taxes, two (2) per cent.

For every mile traveled in going to and returning to make settlement with the state treasurer and auditor, and to make deposits of state revenue, when required by the county commissioners, fifteen (15) cents per mile.

COUNTY CLERK'S FEES.

Second class; fees of county clerks.

1183. SEC. 23. The county clerk shall be and he is hereby authorized to receive the same fees as district clerks for like services:

For entering each order of court, twenty-five (25) cents per folio.

For administering each oath, fifteen (15) cents.

For each certificate and seal, sixty (60) cents.

Each bond and license, two (2) dollars.

Taking proof in estray cases, and granting certificates of same, one dollar and fifty (1.50) cents.

For advertisemt, including copy for a newspaper publication, one (1) dollar.

For trying and sealing weights and measures by county standard, forty (40) cents.

For every certificate of magistracy, under seal, sixty (60) cents.

For every instrument authorized to be recorded, first one hundred (100) words, thirty-five (35) cents.

For each additional folio, fifteen (15) cents.

For each entry in index, ten (10) cents.

For certificate of record, twenty (20) cents.

Taking acknowledgments, fifty (50) cents.

Copies of record, per one hundred (100) words, fifteen (15) cents.

For making search of records where no certificate is given, twenty-five (25) cents.

For recording town plats, for first one hundred (100) lots, or less, four (4) dollars.

For each additional lot, one and one-half (1½) cents.

For making abstracts for the first five conveyances or entries, or less, each fifty (50) cents.

For each additional conveyance or entry, thirty (30) cents.

FEES OF JUSTICES OF THE PEACE.

Secoed class, fees of justices of the peace.

1184. SEC. 24. The fees of justices of the peace shall be as follows, to wit:

For docketing each case, twenty (20) cents.

For issuing summons for one person, seventy (70) cents; for each additional person named therein, thirty-five (35) cents.

For each order of arrrest, fifty (50) cents.

For each attachment against property, one (1) dollar.

For attachment against persons for contempt sixty (60) cents.

For each *mittimus*, seventy-five (75) cents.

For subpœna for one person, forty (40) cents; for each additional person, fiifteen (15) cents.

For each *venire*, seventy-five (75) cents.

For each execution or order of sale seventy-five (75) cents.

For each writ of restitution, eighty (80) cents.

For warrant for one person, criminal, seventy-five (75) cents; for each additional person thirty-five (35) cents.

For order on jailer for person or persons, fifty (50) cents.

For writs of forcible entry or detainer, one (1) dollar.

For every other writ required by law, fifty (50) cents.

For hearing each preliminary or dilatory motion, thirty-five (35) cents.

For judgments on merits, or for costs, sixty (60) cents.

For dismission or continuance, forty (40) cents.

For taking verdict, thirty-five (35) cents.

For making up docket, each one hundred (100) words, twenty (20) cents.

For each certificate, twenty-five (25) cents.

For transcript of docket, or other writing, each one hundred (100) words twenty (20) cents.

For swearing jury, twenty-five (25) cents.

For administering each oath, fifteen (15) cents.

For filing each paper, ten (10) cents.

For taking each bond, or undertaking, forty (40) cents.

For appointing special constable, twenty (20) cents.

For taking each acknowledgment, fifty (50) cents.

For trying each cause of forcible entry and detainer, one (1) dollar and fifty (50) cents.

For trying each criminal case, or misdemeanor, seventy-five (75) cents.

For trying each civil cause, seventy-five (75) cents.

For taking depositions, each one hundred (100) words, twenty (20) cents.

For writing affidavit, or other writing not provided for, each one hundred (100) words, twenty (20) cents.

For performing duties as coroner, same fees as coroner.

For marrying each couple and making returns, four (4) dollars.

For issuing attachment or replevin notice, forty (40) cents cach.

FEES OF CONSTABLES.

1185. SEC. 25. The fees of constables shall be as follows, to wit: Second class; fees of constables.

For serving and returning each warrant or other writ not herein provided for, on each person therein named, eighty-five (85) cents.

For serving and returning each summons on each person, sixty (60) cents.

For serving and returning each subpœna on each person forty (40) cents.

For serving and returning attachment eighty-five (85) cents.

For serving and returning writs of replevin and appointing appraisers, one (1) dollar and fifty (50) cents.

For returning each process not served, thirty-five (35) cents.

For conveying prisoners to and from jail, seventy-five (75) cents.

For serving and levying executions, seventy-five (75) cents.

For serving writ with aid of *posse comitatus*, five (5) dollars.

For taking replevin or other bond, seventy-five (73) cents.

For transporting prisoners, per mile, twenty (20) cents.

For each mile actually traveled in all cases, fifteen (15) cents.

For attending at each jury trial occupying one-half (½) day one dollar and fifty cents, ($1.50.)

For each additional half day, one (1) dollar.

For attending on each trial or examination, without a jury one (1) dollar and twenty-five (25) cents.

For commissions on money collected without sale, three (3) per cent. on all sums of one hundred (100) dollars or under.

On all sums over one hundred (100) dollars, two (2) per cent.

On all sums of money collected by sale, of sums of one hundred (100) dollars and under, six (6) per cent., and on all sums over one hundred (100) dollars, four (4) per cent.

FEES OF COUNTY JUDGE.

Second class, fees of county judges.

1186. SEC. 26. The county judge shall receive the following fees for services performed by him:

For appointing an executor, administrator, guardian or trustee, four (4) dollars.

For granting letters testamentary, or of administration, and affixing the seal thereto, three (3) dollars.

Taking bond of executor, administrator or guardian, and approving the same, one (1) dollar and (50) cents.

For administering oath to each executor, administrator or guardian, thirty-five (35) cents.

Taking proof of will or codicil, two (2) dollars and twenty-five (25) cents.

For recording any will, codicil or other paper, for each one hundred (100) words, twenty (20) cents.

For examining each inventory, bill of sale or account current, filed by an executor or administrator, eighty-five (85) cents.

For entering the settlement of executors or administrators, twenty (20) cents per folio of one hundred (100) words.

For all copies of orders, papers and proceedings, twenty (20) cents per folio of one hundred (100) words.

For each decree, limiting the time for exhibiting the claims of creditors, seventy-five (75) cents.

For each order of distribution, two (2) dollars.

For exemplified copies of records, per folio of one hundred (100) words, twenty (20) cents.

Making order for publication, thirty-five (35) cents.

Allowing appeal to district court, one (1) dollar.

Issuing each writ, summons or citation, one (1) dollar.

Administering oath and certificate thereof, thirty (30) cents.

Administering oath to witness, fifteen (15) cents.

Issuing subpœna, sixty (60) cents.

Entering each order, decree or judgment not herein enumerated, fifty (50) cents.

Filing any paper pertaining to any estate, ten (10) cents.

Granting letters of guardianship or trusteeship, two (2) dollars.

Taking and approving any bond not heretofore specified, seventy-five (75) cents.

Revoking letters testamentary, of administration or guardianship, one dollar and fifty cents ($1.50.)

Administering oath to jury, twenty-five (25) cents.

Taking acknowledgments of interests, sixty (60) cents.

Issuing *venire* for jury, fifty (50) cents.

Entering verdict, thirty-five (35) cents.

Allowing or disallowing demands against an estate, forty (40) cents.

Entering order of continuance, thirty-five (35) cents.

Decree for settling estate, three (3) dollars and fifty (50) cents.

For each hearing on petition for partition of real estate, or sale of real estate, two (2) dollars.

For making and entering each order for the sale of personal property, one (1) dollar.

For making and entering each order or decree for the sale or partition of real estate, two (2) dollars.

For solemnizing marriages, four (4) dollars.

For each trial or hearing of a cause instituted in the county court, for each day occupied by him in hearing or trial, to be taxed as costs against the unsuccessful party, five (5) dollars.

For hearing each contested claim against estates and entering decision in same, one (1) dollar and fifty (50) cents.

For each hearing on application to revoke letters testamentary, of administration, guardianship, conservatorship or trustee, to be taxed against the losing party, one (1) dollar and fifty (50) cents.

COUNTY COMMISSIONERS' FEES.

Second class; fees of county commissioners.

1187. SEC. 27. The county commissioners shall be allowed five (5) dollars per day for each day spent in the performance of their duties as commissioners, and fifteen (15) cents per mile for the distance actually traveled in going to and returning from the place of meeting.

FEES FOR CORONERS.

Second class; coroners' fees.

1188. SEC. 28. Coroners shall be allowed five (5) dollars per day for each day actually engaged in making an inquest, and fifteen (15) cents per mile for each mile actually traveled in going to and returning from the place of inquest, to be paid by the county.

For all services performed in the place of the sheriff, the same fees as are allowed to the sheriff for his services.

1189. SEC. 29. That the following fees are hereby established as legal fees for officers in counties of the third class, namely:

FEES OF CLERKS OF DISTRICT AND COUNTY COURTS.

Third class; fees of clerks of district and county courts.

For filing each paper required to be filed, fifteen (15) cents.

For every summons or other process, not herein expressly named, and sealing the same, one dollar and twenty-five cents ($1.25).

For each subpœna, provided that only one subpœna shall be issued for every four witnesses, unless expressly requested, seventy-five (75) cents.

For taking bond for cost, fifty (50) cents.

For filing papers on appeal from justice of the peace, taking appeal bond and issuing *supersedeas* thereon, two (2) dollars.

For each entering of a suit on docket for trial, twenty-five (25) cents.

For entering each order or rule of court for continuance, or any order, rule or proceeding of court actually entered in the progress of a suit, and counting the whole entry for one, seventy-five (75) cents.

For each discontinuance, *retraxit* or non-suit, fifty (50) cents.

For each dedimus to take deposition, two (2) dollars.

For calling and swearing each jury, fifty (50) cents.

For swearing each witnessin court, fifteen (15) cents.

For swearing any person to an affidavit and filing the same, thirty-five (35) cents.

For entering each final judgment in a case, seventy-five (75) cents.

For entering each decree in chancery, twenty-five (25) cents per folio.

For issuing each writ of *habeas corpus*, *certiorari* or *procedendo*, one (1) dollar and (50) cents.

For issuing each writ of injunction, *quo warranto* or *mandamus*, two (2) dollars.

For issuing each writ of attachment or replevin, two (2) dollars.

For assessing the damages on any bond, note, or other instrument for the payment of money by order of the court, and making a report thereof, and filing said report, one (1) dollar.

For entering special bail, if secured, in each case, fifty (50) cents.

For swearing officers to take charge of jury, twenty (20) cents.

For issuing an execution, one (1) dollar and fifty (50) cents.

For docketing the same, twenty-five (25) cents.

For entering the sheriff's return on each execution, per folio, twenty-five (25) cents.

For entering the satisfaction of judgment, twenty-five (25) cents.

For entering the report of commissioners or referees, or the award of arbitrators, and all other special entries, per folio, twenty (20) cents.

For each certificate and seal, other than the process of court, one (1) dollar.

For taking and approving appeal, or any other bond, each, one dollar and fifty (1.50) cents.

For entering the appearance of attorney, twenty-five (25) cents.

For each attachment of a witness or other person, one (1) dollar.

For each *venire facias*, one (1) dollar and fifty (50) cents.

For making bill of costs for each execution, entering the same of record in the fee book, being one charge, one (1) dollar.

For making a complete record, for each folio, twenty (20) cents.

For making copy of any paper in a case, per folio, twenty (20) cents.

For certifying and sealing the same when required, one (1) dollar.

For taking deposition, per folio, and certifying the same, twenty (20) cents.

For taking acknowledgment of deed, power of attorney, or other instrument in writing, and certifying and sealing the same, one (1) dollar.

For filing and recording declaration of intent to become a citizen of the United States, three (3) dollars.

For final naturalization, including oath, recording copy, certificate and seal, five (5) dollars.

For taking each recognizance in courts and entering the same of record, one (1) dollar.

For arraigning prisoners at the bar, fifty (50) cents.

For entering judgment of conviction, one (1) dollar.

For copy of indictment, when required, per folio, twenty (20) cents.

For copy of lists of grand or petit jurors, when required in a criminal case, (30) cents.

For filing papers on appeal from county court, one (1) dollar.

For entering attorney on rolls, administering oath, certificate and seal, five (5) dollars.

For taking each recognizance in court and entering the same of record, one (1) dollar.

SHERIFFS' FEES.

1190. SEC. 30. For serving and returning summons on each party, one (1) dollar and fifty (50) cents. Third class; sheriff's fees.

For serving subpœna on each witness, seventy-five (75) cents.

For summoning each juror, seventy-five (75) cents.

For advertising property for sale, besides actual expenses, one (1) dollar.

For returning each writ or other process, seventy-five (75) cents.

Mileage for each mile actually traveled, twenty (20) cents.

For levying execution, two (2) dollars.

For serving and returning *scire facias*, one (1) dollar and fifty (50) cents.

For committing or discharging prisoners to and from jail, one (1) dollar.

For dieting prisoners per day, such reasonable compensation as shall be allowed by the board of county commissioners, not to exceed one (1) dollar *per diem*.

For attending before any judge with prisoners with writ of *habeas corpus*, one dollar and fifty cents ($1.50.)

For each mile traveled in taking prisoners before any judge on writ of *habeas corpus*, fifteen (15) cents.

For serving writ of possession with aid *posse comitatus*, five (5) dollars, with actual expenses incurred in executing such writ.

For serving same without aid, two (2) dollars and fifty (50) cents.

For attending district or county court when in session, per day, four (4) dollars, to be paid out of the county treasury.

For executing and acknowledging deed of sale of real estate, three (3) dollars and fifty (50) cents.

For making certificate of sale, previous to execution of deed, two (2) dollars.

For taking bond in any case, one dollar and fifty ($1.50) cents.

For executing *capias* or warrant in criminal cases on each person named therein, one dollar and fifty ($1.50) cents.

For making and recording certificate of levy in attachment and other cases, two (2) dollars.

For transporting prisoners, per mile, thirty (30) cents, besides actual expenses, exclusive of railroad and team fare necessarily incurred.

Commission on money collected without sale, on all sums under five hundred (500) dollars, three (3) per cent.; on all sums over five hundred (500) dollars and under one thousand (1000) dollars, two (2) per cent., and all sums over one thousand (1000) dollars, one (1) per cent; *provided*, that such commission shall in no one case exceed the sum of thirty (30) dollars.

Commissions on money collected by sale, on all sums under five hundred (500) dollars, six (6) per cent.; on all sums over five hundred (500) dollars and under one thousand (1000,) five (5) per cent.; on all sums over one thousand (1000) dollars, two (2) per cent. *Provided*, that such commission shall in no one case exceed the sum of fifty (50) dollars.

For executing sentence of death, fifty (50) dollars, together with actual expenses incurred in carrying out such sentence of death, to be paid out of the county treasury.

For pursuing and capturing each person charged with the commission of any crime denominated a felony, beyond the limits of said county, in addition to the mileage allowed by law, the sum of three (3) dollars per day, to be paid out of the county treasury.

The constable shall be entitled to the same fees for pursuing and capturing criminals as is now provided for sheriff's in this act, to be paid out of the county treasury. Fees of constable for pursuing, capturing, etc., criminals.

1191. SEC. 31. The county treasurer shall receive the following compensation:

Three (3) per cent. upon all moneys received by him for taxes of every kind, except school taxes, which shall be one (1) per cent., and such additional per cent. as the county commissioners may allow, not to exceed ten (10) per cent. in all. Third class; fees of county treasurers.

For receiving all moneys other than taxes, three (3) per cent.

For every mile traveled in going to and returning to make settlement with with state treasurer and auditor, and to make deposits of state revenue, when required by the county commissioners, twenty (20) cents per mile.

COUNTY CLERK'S FEES.

1192. SEC. 32. The county clerk shall be and he is hereby authorized to receive the same fees as district clerks for like services. Third class; fees of county clerks.

For entering each order of court, thirty-five (35) cents per folio.

For administering each oath, twenty (20) cents.

For each certificate and seal, seventy-five (75) cents.

Each bond and license, three (3) dollars.

Taking proof in estray cases, and granting certificate of same, two (2) dollars.

For advertisement, including copy for a newspaper publication, one dollar and fifty (1.50) cents.

For every certificate of magistracy, under seal, seventy-five (75) cents.

For every instrument authorized to be recorded, first one hundred (100) words, forty (40) cents.

For each additional folio, twenty-five (25) cents.

For each entry in index, ten (10) cents.

For certificate of record, fifty (50) cents.

Taking acknowledgments, seventy-five (75) cents.

Copies of record, per one hundred (100) words, twenty (20) cents.

For making search of records where no certificate is given, twenty-five (25) cents.

For recording town plats, for first one hundred (100) lots, or less, five (5) dollars.

For each additional lot, two (2) cents.

For making abstracts, for the first five conveyances or entries, or less, each sixty (60) cents.

For each additional conveyance or entry, thirty-five (35) cents.

FEES OF JUSTICES OF THE PEACE.

Third class; fees of justices of the peace.

1193. SEC. 33. The fees of justices of the peace shall be as follows, to wit:

For docketing each case, twenty-five (25) cents.

For issuing summons for one person, seventy-five (75) cents; for each additional person named therein, fifty (50) cents.

For each order of arrest, seventy-five (75) cents.

For each attachment against property, one dollar and twenty-five (1.25) cents.

For attachment against persons for contempt, seventy-five (75) cents.

For each *mitimus*, one (1) dollar.

For subpœna for one person, fifty (50) cents; for each additional person, twenty-five (25) cents.

For each *venire*, one (1) dollar.

For each execution or order of sale, one (1) dollar.

For each writ of restitution, one (1) dollar.

For warrant for one person, criminal, one (1) dollar; for each additional person, fifty, (50) cents.

For order on jailer for person or persons, seventy-five (75) cents.

For writs of forcible entry or detainer, one (1) dollar and fifty (50) cents.

For every other writ required by law, fifty (50) cents.

For hearing each preliminary or dilatory motion, fifty (50) cents.

For judgments on merits, or for costs, seventy-five (75) cents.

For dismission or continuance, fifty (50) cents.

For taking verdict, twenty-five (25) cents.

For making up docket, each one hundred (100) words, twenty-five (25) cents.

For each certificate, fifty (50) cents.

For transcript of docket, or other writing, each one hundred (100) words, twenty-five (25) cents.

For swearing jury, twenty-five (25) cents.

For administering each oath, twenty-five (25) cents.

For filing each paper, fifteen (15) cents.

For taking each bond, or undertaking, fifty (50) cents.

For appointing special constable, twenty-five (25) cents.

For taking each acknowledgment, fifty (50) cents.

For trying each cause of forcible entry and detainer, two (2) dollars.

For trying each criminal case or misdemeanor, one (1) dollar.

For trying each civil cause, one (1) dollar.

For taking depositions, each one hundred (100) words, twenty-five (25) cents.

For writing affidavit, or other writing not provided for, each one hundred 100 words, twenty-five (25) cents.

For performing duties as coroner, same fees as coroner.

For marrying each couple and making returns, three (3) dollars.

For issuing attachment or replevin notice, forty (40) cents each.

FEES OF CONSTABLES.

1194. SEC. 34. The fees of constables shall be as follows, to wit: Third class; fees of constables.

For serving each warrant or other writ not herein provided for, on each person therein named, one (1) dollar.

For serving each summons on each person, seventy-five (75) cents.

For serving each subpœna on each person, fifty (50) cents.

For serving attachment, one (1) dollar.

For serving writs of replevin and appointing appraisers, two (2) dollars.

For returning each process, fifty (50) cents.

For serving and levying executions, one (1) dollar.

For conveying prisoners to and from jail, one (1) dollar.

For serving writ, with aid of *posse comitatus*, five (5) dollars.

For taking replevin or other bond, one (1) dollar.

For transporting prisoners, per mile, twenty-five (25) cents.

For each mile actually traveled in all cases, twenty (20) cents.

For attending at each jury trial occupying one-half (½) day, two (2) dollars.

For each additional six (6) hours, one (1) dollar.

For attending on each trial or examination, without a jury, one (1) dollar and fifty (50) cents.

For commissions on money collected without sale, five (5) per cent. on all sums of one hundred (100) dollars or under. On all sums over one hundred (100) dollars, three (3) per cent. On all sums of money collected by sale, of sums of one hundred (100) dollars and under, eight (8) per cent., and on all sums over hundred (100) dollars, five (5) per cent.

FEES OF COUNTY JUDGE.

Third class; fees of county judges.

1195. SEC. 35. The county judge shall receive the following fees for services performed by him:

For appointing an executor, administrator, guardian, or trustee, ten (10) dollars, if contested; if not contested, five (5) dollars.

For granting letters testamentary, or of administration, and affixing the seal thereto, three (3) dollars.

Taking bond of executor, administrator or guardian, and approving the same, two (2) dollars.

For administering oath to each executor, administrator or guardian, fifty (50) cents.

Taking proof of will or codicil, two (2) dollars and fifty (50) cents.

For recording any will, codicil or other paper, for each one [hundred] (100) words, twenty-five (25) cents.

For examining each inventory, bill of sale or account current, filed by an executor or administrator, one (1) dollar.

For entering the settlement of executors or administrators, twenty-five (25) cents, per folio of one hundred (100) words.

For all copies of orders, papers and proceedings, twenty-five (25) cents per folio of one hundred (100) words.

For each decree, limiting the time for exhibiting the claims of creditors, one (1) dollar.

For each order of distribution three (3) dollars.

For exemplified copies of records per folio, of one hundred (100) words, twenty-five (25) cents.

Making order for publication, fifty (50) cents.

Alowing appeal to district court, one (1) dollar and fifty (50) cents.

Issuing each writ, summons or citation, one (1) dollar and fifty (50) cents.

Administering oath and certificate thereof, forty (40) cents.

Admistering oath to witness, twenty (20) cents.

Issuing subpœna seventy-five (75) cents.

Entering each order, decree or judgment not herein enumerated, seventy-five (75) cents.

Filing any paper pertaining to any estate, fifteen (15) cents.

Granting letters of guadianship or trusteeship, two (2) dollars.

Taking and approving any bond not heretofore specified, one (1) dollar.

Revoking letters testamentary of administration or guardianship, two (2) dollars.

Administering oath to jury, thirty (30) cents.

Taking acknowledgments of interests, seventy-five (75) cents.

Issuing *venire* for jury seventy-five (75) cents.

Entering verdict, fifty (50) cents.

Allowing or disallowing demands against an estate, forty (40) cents.

Entering order of continuance, fifty (50) cents.

Decree for settling estate, five (5) dollars.

For each hearing on petition for partition of real estate, or sale of real eastate, three (3) dollars.

For making and entering each order for the sale of personal property, one (1) dollar.

For making and entering each order or decree for the sale or partition of real estate, two (2) dolars and fifty (50) cents.

For solemnizing marriages, three (3) dollars.

For each trial or hearing of a cause instituted in the county court for each day occupied by him in hearing, or trial to be taxed as costs against the unsuccessful party, five (5) dollars.

For hearing each contested claim against estates and entering decision in same, two (2) dollars.

For each hearing on application to revoke letters testamentary, of administation, guardianship, conservatorship or trustee, to be taxed as costs against the losing party, two (2) dollars.

COUNTY COMMISSIONERS' FEES

Third class; fees of county commissioners.

1196. SEC. 36. The county commissioners shall be allowed five (5) dollars per day for each day spent in the performance of their duties as commissioners, and fifteen (15) cents per mile for the distance actually traveled in going to and returning from the place of meeting. *Provided*, the sum recovered by each for their services and mileage shall not exceed, in any one (1) year, the sum of five hundred (500) dollars.

FEES FOR CORONER.

Third class; coroner's fees.

1197. SEC. 37. Coroners shall be allowed five (5) dollars per day for each day actually engaged in making an inquest, and fifteen (15) cents per mile for each mile actually traveled in going to and returning from place of inquest, to be paid by the county.

For all services performed in the place of the sheriff, the same fees as are allowed to the sheriff for his services.

Penalty for charging or receiving illegal fees.

1198. SEC. 38. If any person shall charge and collect any fee or sum of money for his official services greater in amount than the fee or sum provided in this act or by law, for such official services, he shall be liable to pay three times the amount of the whole fee or sum he shall

so collect, to be recovered in an action in any court of competent jurisdiction, by any person of whom he shall have collected the same.

1199. SEC. 39. All acts and parts of acts inconsistent with this act, are hereby repealed. Repeal.

Approved, March 24, 1877.

CHAPTER XXXV.

FENCES AND ENCLOSURES.

[Revised Statutes, Chapter XXXII.]

1200. SECTION 1. Where the lands of two persons join, and both parties shall occupy the land, it shall be the duty of each party to build one-half of the line fence. Fences dividing lands; who shall build.

1201. SEC. 2. Where one party shall have already erected a fence upon any line between himself and any other party, and the other party wishes to occupy the land adjoining, it shall be his duty to either build one-half of said fence, or pay the party owning said fence one-half of its cash value. When division fence already built, other party upon occupancy to pay one-half its value.

AN ACT CONCERNING FENCES AND ENCLOSURES IN THE STATE OF COLORADO.

Be it enacted by the General Assembly of the State of Colorado:

1202. SECTION 1. The following shall be a lawful fence in the state of Colorado:

Post and plank fences, four feet six inches high; made of sound posts not less than four inches in diameter, set substantially in the ground, not more than eight feet apart, with three planks of one inch lumber, and eight inches wide, or four boards, six inches wide, not more than six inches apart, securely fastened with nails or otherwise; said planks not more than eight inches apart. All other fences made of rail, wire, poles or stone, or any other material which upon evidence shall be declared as strong and as well calculated to protect enclosures as the one first described, shall be considered a lawful fence. What shall constitute a lawful fence.

Recovery of damages by owner of premises legally enclosed, in a suit for trespass.

1203. SEC. 2. Any person making and maintaining in good repair around his or her enclosure, any fence, such as described in section 1 of this act, may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner of any animal or animals, which break through any such fence, in full for all damages sustained on account of such trespass, together with costs of suit, and the animal or animals so trespassing, may be taken and held for security for the payment of such damages nad costs, and no person or persons shall be allowed to recover damages for any injury to any crop, or grass, or garden products or other vegetable products, unless the same at the time of such trespass or injury, was enclosed by a legal and sufficient fence as before described.

Partition fences.

1204. SEC. 3. Partition fences shall be erected and kept in repair at the joint cost of the owners of the respective adjoining enclosures, provided said land is occupied, except as otherwise agreed by the parties.

When one party may collect one-half cost of fence from other party.

1205. SEC. 4. If after due notice be given by either party and reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the entire cost thereof, from the other party. *Provided*, the respective parties occupy the same for purposes requiring a fence.

Maintaining and repairing partition fences.

1206. SEC. 5. The respective owners of adjoining enclosures shall keep up and maintain in good repair all partition fences between such enclosures in equal shares, so long as they shall continue to occupy and improve the same.

Removal of fences unwittingly erected on land of another.

1207. SEC. 6. When any person shall unwittingly or by mistake erect a fence on the land of another, and when by a line legally determined, that fact shall be ascertained, such person may enter upon such premises, and remove such fence at any time within one year after giving notice that such line has been run as aforesaid; *provided*, that when the fence to be removed forms any part of a fence enclosing a field of the other party having a crop thereon, such first person shall not remove such fence until such

crop could with reasonable diligence have been gathered and secured.

1208. SEC. 7. When any person shall wish to lay open his or her enclosure, he or she shall notify any person owning an adjoining enclosure, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such enclosure within one year after receiving such notice, the party giving such notice may proceed to remove one-half of such fence as provided in section six (6) of this act, if the person giving such notice has erected such fence or paid his or her proportion of the cost of erecting the same.

Removal of partition fence when one party desires to lay open enclosure.

1209. SEC. 8. Whenever a petition shall be presented to the county commissioners of any county in this state, signed by not less than one hundred taxpayers of said county, praying that the question of adoption or rejection of this law be submitted to the people, it shall be the duty of the commissioners to direct the sheriff to give notice in every precinct in the county thirty (30) days before the general election, in some newspaper published in his county if there be one, if not, by posting written or printed notice, that the question of the adoption or rejection of this law will be submitted to the people for their acceptance or rejection.

Submission of this law to the people for adoption or rejection.

1210. SEC. 9. At such election each voter may vote "For Fence Law," or "Against Fence Law." If a majority of said votes shall be for fence law, then the law shall be adopted; but if a majority of the votes are against fence law, then this act shall be of no force therein: *Provided*, this act shall not be construed to prevent any person from collecting damage, where he has his crops or grass and other products enclosed with a lawful fence.

Manner of voting.

Construction of this act.

1211. SEC. 10. The board of county canvassers shall canvass the vote for fence law and against fence law at the same time and in the same manner provided for canvassing the votes for county officers, and the result of such canvass shall by order of the county commissioners be published in some paper in the county, or notice given by posting in at least three conspicuous places in the county; *provided*, that if a fence law shall be adopted it shall not take effect until twelve months after the time of adoption.

Canvass of votes. If law adopted, when to take effect.

Not to destroy former fence districts.

1212. SEC. 11. This act shall not have any effect to destroy any fence district already organized and the laws governing such organization.

Approved, March 22, 1877.

CHAPTER XXXVI.

FIREMEN.

AN ACT RELATING TO THE EXEMPTION OF VOLUNTEER FIREMEN AS JURORS AND FROM PAYING POLL TAX IN THE STATE OF COLORADO AND TO REPEAL CERTAIN ACTS RELATING THERETO.

Be it enacted by the General Assembly of the State of Colorado:

Exemption of firemen from serving as jurors and payment of poll tax.

1213. SECTION 1. That any person who is now, or shall hereafter become, a working member of any fire engine, hook and ladder or, hose company, or volunteer organization for the extinguishment of fires, now existing and under the control of the corporate authorities of any city, or incorporate town, within this state, or of any such organization which may hereafter be organized under and subject to the authorities of any city or town as aforesaid, shall, during the time he may continue a working member of such organization, be exempted from serving as a juror, and from the payment of a poll tax, and any member who shall have been a working member of any such organization in any city or town as aforesaid, and shall have faithfully discharged his duies as such for the term of five (5) years, shall be forever thereafter exempted from serving as jurors and from the payment of a poll tax.

Certifi ate of service with company evidence of exemption.

1214. SEC. 2. That any person who has served in any company for the term of five (5) years as provided in the preceding section, shall be entitled to receive from the foreman of the company of which he may have been a member a certificate to that effect, and on the presentation of such certificate to the clerk or recorder of the proper city or town, it shall be the duty of such clerk or recorder to file the same in his office, and to give his certificate under the county seal to the person entitled thereto, setting forth the name of the company of which such person

may have been a member, and the duration of such membership, and such certificate shall be received in all courts and places in the state as evidence that the person legally holding the same is entitled to the exemption hereinbefore mentioned; *provided*, that nothing herein contained shall be so construed as to diminish any privilege now allowed by any law of this state to any member of any fire company in this state, but shall be considered as conferring additional privileges.

1215. SEC. 3. That chapter thirty three (33) of the revised statutes of Colorado, and all acts and parts of acts inconsistent with this act, be and the same are hereby repealed. Repeal.

Approved, February 20, 1877.

CHAPTER XXXVII.

FISH.

AN ACT TO PROVIDE FOR THE PROTECTION, PRESERVATION, AND PROPAGATION OF FISH, AND TO REPEAL AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE PROTECTION OF FISH IN COLORADO TERRITORY," APPROVED FEBRUARY 11, 1870; AND AN ACT ENTITLED "AN ACT TO AMEND AN ACT ENTITLED 'AN ACT TO PROVIDE FOR THE PROTECTION OF FISH IN COLORADO TERRITORY,' APPROVED FEBRUARY 11, 1870," APPROVED FEBRUARY 9, 1872, AND AN ACT ENTITLED "AN ACT TO ENCOURAGE THE PROPAGATION OF FISH IN COLORADO TERRITORY," APPROVED FEBRUARY 13, 1874.

Be it enacted by the General Assembly of the State of Colorado:

1216. SECTION 1. That it shall not be lawful for any person to kill or take any trout or other fish in any of the waters of this state, by the use of any poison or deleterious or stupefying drug, or by the use of any explosive substance, or by the erection of any weir, dam or other artificial obstruction, or any speckled trout, by the use of any net, seine or device whatsoever, except by a hook and line. *Provided*, that nothing in this act shall be so construed as to prevent the taking of any trout or other fish for the purpose of propagation. Taking and killing of fish by any device other than hook and line.

1217. SEC. 2. It shall not be lawful for any person or persons to kill or take any trout or other fish, in any manner whatsoever, from any private lake, pond or stream, Taking and killing of fish from private waters.

used for the propagation of such fish, except by the consent of the proprietor of such lake, pond or stream.

Erection and maintaining of fishways.

1218. SEC. 3. Any person or persons, or the officers and servants of any company or corporation, maintaining or keeping up any dam, weir or other artificial obstruction, in or upon any stream of water in this state, shall erect and keep up, and maintain at such dam, weir or other artificial obstruction, a sufficient sluice or fishway for the free passage of fish up and down any such stream.

Months during which trout shall not be killed or taken, or offered for sale.

1219. SEC. 4. It shall not be lawful to kill, take, or have in possession for the purpose of sale, any trout taken or killed in any of the public waters of this state, during the months of November, December, January, February or March, or either of said months in any year; and the offering for sale during the months above mentioned, shall be *prima facie* evidence of the violation of the provisions of this section.

Penalty for violation of this act.

1220. SEC. 5. Any person or persons, or the officers or servants of any company or corporation, convicted of violating any of the provisions of this act, shall be fined in any sum not less than twenty-five dollars, nor more than three hundred dollars; or shall be imprisoned in the county jail not less than thirty days nor more than six months, or both fine and imprisonment, in the discretion of the court.

Neglect or refusal to keep up fishway.

1221. SEC. 6. Each and every month that any person, persons, company or corporation, shall neglect or refuse to keep up and maintain a sufficient sluice or fishway as prescribed in section three of this act, shall constitute a separate offense.

Disposition of fines.

1222. SEC. 7. All fines collected under the provisions of this act shall be paid, one-half to the person giving information of the offense, and the other half shall be paid into the treasury of the county wherein the offense was committed, for the benefit of the school fund of such county. And the person entitled to receive the one-half of such fine as informer, shall be deemed and held to be a competent witness upon the trial for such offense.

1223. SEC. 8. All prosecutions for the violation of any of the provisions of this act shall be commenced be-

fore any justice of the peace in the county wherein the offense shall have been committed; and any such justice of the peace shall, upon his own knowledge, or upon the oath of any competent person, issue his warrant to any constable of his county for the arrest of any person or persons charged with the violation of any of the provisions of this act; and upon the arrest of such person or persons, shall proceed in the hearing of said complaint as in other cases of misdemeanor cognizable before justices of the peace.

Prosecutions: how and where to be commenced

1224. SEC. 9. The court shall, in all cases of conviction under this act, when any fine is imposed, order as part of the judgment of the court, that the offender shall be committed to jail, there to remain until such fine and the costs are fully paid, or otherwise legally discharged, *provided*, the term of imprisonment shall not exceed six months for each offense.

Imprisonment in default of payment of fine and costs.

1225. SEC. 10. It shall be the duty of the governor, immediately upon the taking effect of this act, and every second year thereafter, to appoint a person skilled in fish culture and the habits and nature of food-fishes, to be state fish commissioner, and who shall hold his office for the term of two years. Said commissioner shall have supervision of all fish cultural matters of a public nature, and shall receive and provide for the proper care and distribution of such food-fishes or ova of the same as shall come into the possession of the state. He will determine the necessity for fish ways, the location, form and capacity thereof, giving notice for their construction and maintenance. He shall receive compensation for time actually engaged in service of the state, not exceeding in any one year the sum of one hundred dollars, together with the additional sum of one hundred dollars, which can only be expended for express charges, and such other expenses as may be incident to the proper care and distribution of such fish as may come into the possession of the state; all accounts to be approved by the governor.

Appointment, duties and salary of fish commissioner.

1226. SEC. 11. The fish commissioner shall, annually, before the first day of December, make to the governor a report of the transactions of the year, and set forth in said

Annual report of fish commissioner.

report any and all information he may have obtained in regard to the varieties of fish adapted to the waters of this state, and the methods of culture of the same, and the waters to which they are adapted, together with any information that may aid in promoting the cuture of edible fish in the state, and the governor shall embody the same in his report to the general assembly.

Repeal.

1227. SEC. 12. An act entitled "an act to provide for the protection of fish in Colorado territory," approved February 11, 1870, and an act entitled "an act to amend an act entitled 'an act to provide for the protection of fish in Colorado territory,' approved February 11, 1870," approved February 9, 1872, and an act entitled "an act to encourage the propagation of fish in Colorado territory," approved February 13, 1874," be and the same are hereby repealed.

Emergency.

1228. SEC. 13. As the time in which the beneficial effects of this act for the present season is fast passing away, and its good effects may thereby be postponed, therefore an emergency exists, and this act shall take effect and be in force on and after its passage.

Approved, March 10, 1877.

CHAPTER XXXVIII.

FORCIBLE ENTRY AND DETAINER.

[Revised Statutes, Chap. XXXV.]

Unlawful or forcible entry forbidden.

1229. SECTION 1. No person shall enter upon or into any lands, tenements or other possessions, except in cases where entry is given by law, and then only in a peaceable manner.

Forcible entry and detainer defined.

1230. SEC. 2. If any person or persons shall enter upon or into any lands, tenements or mining claim or other possessions, with force, or strong hand, or multitude of people, whether any person be actually upon or in the same at the time of such entry or not, or if any person, by threats of violence or injury to the party in possession, or by such words or actions as have a natural tendency to excite fear or apprehension of danger, shall gain possession of any lands, tenements, mining claims or other possess-

ions, and detain and hold the same; or if any person shall enter peaceably upon any lands, tenements, mining claims or other possessions, whether any person be actually in or upon the same at the time of such entry or not, and shall by force turn the party in possession out, or by threats, or by words or actions which have a natural tendency to excite fear or apprehension of danger, frighten the party out of possession, and detain and hold the same; or if any person shall enter upon or into any lands, tenements, mining claims or other possessions, peaceably or otherwise, and by force or by threats of violence, or words or actions, which have a natural tendency to excite fear or apprehension of danger, shall intimidate the party entitled to possession from returning upon or possessing the same, and shall hold and detain the same; in every such case the person or persons so offending shall be deemed guilty of a forcible entry and detainer, within the meaning of this chapter.

Unlawful detainer defined.

1231. SEC. 3. If any person or persons wrongfully and without force, shall detain or continue in possession of any lands, tenements, mining claims or other possessions, and after demand made in writing for the delivery of the possession thereof by the person entitled to such possession, or his or her agent or attorney, shall refuse or neglect to quit the possession thereof, and deliver the same up to the party entitled thereto, such person or persons so offending shall be deemed guilty of an unlawful detainer, within the meaning of this chapter.

Wrongful detainer defined.

1232. SEC. 4. A defendant shall be deemed and held guilty of wrongful detaining or continuing in the possession of property, within the meaning of this chapter, when such detainer or continuance in possession are shown to have been made or done in bad faith, and with a knowledge that such defendant had no legal right to detain or continue in possession of such lands, tenements, mining claims or other possessions, and the plaintiff having established his right to recover in the action, *prima facie*, the burden of proof shall be upon the defendant, to show that the detainer or continuance in possession was made or done in good faith, and upon legal right in him, or those under whom he claims.

Holding over after expiration of lease, an unlawful detainer.

1233. SEC. 5. If any person shall, with or without force, hold over any lands, tenements, mining claims or other possessions, after the termination of the time for which such lands, tenements, mining claims or possessions were let or demised to him or her, or to the person under whom he or she claims, or contrary to the conditions, covenants or terms of the lease or agreement under which he or she holds, or after any rent shall have become due, according to the terms of such lease or agreement, and shall remain unpaid for the space of three days, in all such cases, after demand made in writing for possession of the premises let or demised, by the person entitled to such possession, his or her agent or attorney, the person or persons so holding shall be deemed and adjudged guilty of an unlawful detainer, within the intent and meaning of this chapter.

Forfeiture of lease for failure to pay rent when due.

1234. SEC. 6. It shall not be necessary in order to work a forfeiture for non-payment of rent, to make a demand for rent on the day on which the same becomes due, or at any particular time of the day, but demand may be made of the tenant or person from whom such rent is due, at any time after the rent is due, and such demand may be made for the whole amount due and unpaid at the time of making the same. The failure on the part of the lessee or his assigns to pay rent, upon such demand being made, or as provided in section five of this chapter, shall work a forfeiture of the lease or agreement.

(Amendment 1877, approved February 19.) Change of terms of lease; what notice to be given.

1235. SEC. 7. In all leases of lands or tenements or any interest thereon, from month to month, the landlord may, and it shall be lawful for him, upon giving notice in writing to the tenant at least fifteen days before the expiration of the month, to change the terms of the lease or agreement under which such tenant holds, to take effect at the expiration of the month. Said notice when served upon the tenant, shall, of itself, operate and be effectual to create and establish, as a part of the lease or agreement, the terms and conditions specified in said notice after the expiration of such month. *Provided, however*, that nothing herein contained shall be held to authorize an increase of rent to more than twice the amount charged immediately before

the giving of the notice aforesaid, nor to extend the lease so as to make the same other than a lease from month to month. Increase of rent and extension of lease, limited.

1236. SEC. 8. It is hereby declared to be the intent and meaning of this chapter, that the action of forcible entry and detainer, or unlawful detainer, as the case may be, may be brought and maintained to recover the possession of any lands, tenements, mining claims or other possessions, by persons entitled to the same, in all cases where such persons or those under whom they claim, may have entered or settled upon any of the public lands in this state, for mining, agricultural or other purposes, as in other cases, and that in no case shall the fact that the title to any property hath not passed from the United States, be deemed or held to bar or defeat the recovery of the plaintiff, and when the same has not been sold by the general government, in the absence of paper title for the purposes of this action, the right of possession in such person or persons shall extend according to the customs of the neighborhood in which said claim is located, to the number of feet, acres or extent embraced in such claim, not exceeding, if for agricultural purposes, one hundred and sixty acres of land. Title being in United States not to defeat recovery. Extent of claim.

1237. SEC. 9. The district courts in their respective districts, and county courts and justices of the peace in their respective counties, shall have jurisdiction of cases arising under this chapter. If the complaint shall be made before a justice of the peace, and it shall appear to such justice from sufficient affidavit, or the evidence presented upon the trial of the cause, that the title or boundaries to the premises in question, is in dispute, between the parties, and that an adjudication of the same may be necessary for a final determination of the cause, it shall be the duty of such justice to arrest all proceedings before him, and immediately certify his proceedings, and transmit all the papers in the cause, to the county court of his county, and the county court upon receiving such proceedings and papers, shall proceed in the same manner as if the cause had been instituted in that court: *Provided*, that if there shall be no county judge in the county at the time such proceedings are had, or if the parties, plaintiff or de- What courts have jurisdiction; question of title or boundaries on trials before justice of the peace.

fendant, shall each assent thereto, the justice of the peace shall certify his proceedings and transmit the papers to the clerk of the district court of the county in which the cause originated, or to the clerk of the district court of any county to which such county may be attached for judicial purposes. *And, provided further,* that if the justice of the peace before whom such case shall be commenced, wherein the title or boundaries shall come into dispute, be also county judge, he shall certify said cause to the district court of his county instead of the county court.

Action, how commenced; summons and return thereof.

1238. SEC. 10. The mode of commencing proceedings under this chapter shall be by filing a complaint in writing with a justice of the peace or county judge, or in the office of the clerk of the district court of the proper county, and thereupon the justice, county judge or clerk, as the case may be, shall issue a summons as in other cases, except that it shall command the officer to whom it may be directed, to summon the defendant to answer to the complaint of the plaintiff, for that he (the defendant) is in possession of the lands, tenements, mining claims or other possessions in question, describing them, which he holds unlawfully and against the right of the plaintiff, as it is said; such summons shall be served in the same manner and like length of time before the return day thereof, and by the same officers respectively when issued by a justice of the peace, county judge or clerk of the district court, respectively, as in actions of *assumpsit* commenced before such justice or county judge or in such district court.

Complaint and pleas of defendant to be under oath.

1239. SEC. 11. The complaint filed as provided in section ten of this chapter shall describe with reasonable certainty the lands, tenements, mining claims or other possessions which the plaintiff seeks to recover, and shall set forth the substantial facts upon which the plaintiff relies to recover the possession of the same, and shall be verified by the oath of the plaintiff, his or her agent or attorney. The plea or answer of the defendant shall be in writing and under oath of the defendant, his or her agent or attorney.

Under what rules proceedings governed. (Amendment 1872.)

1240. SEC. 12. Upon the trial of cases arising under this chapter before justices of the peace and in county courts, the proceedings shall be governed by the rules of practice

and provisions contained in the chapter concerning justices and constables, except as may be otherwise provided in this chapter.

Appeals to district court. (Amendment 1872.)

1241. SEC. 13. Hereafter, in all cases of forcible entry and detainer, or forcible or unlawful detainer, tried or determined in any county court, or before any justice of the peace, either party may take an appeal to the district court of the proper county, in the same manner and during the same time that is now provided by law for taking appeals from justices of the peace in other cases. But if the defendant or defendants shall appeal, the appeal bond shall be conditioned for the payment of all costs and damages which have been or may be sustained by the plaintiff or plaintiffs in consequence of the wrongful detention of the premises in question, and in case where rent has accrued or will accrue, as double rent under this chapter, for the payment of all rent then due or to become due if the plaintiff or plaintiffs should recover a judgment in the district court for the premises in question: *Provided*, that in all cases, the party having to sue on said bond, may recover double rent for all rent which shall become due after commencing such action, and in all such cases the justice of the peace, or county judge, shall have power to fix the amount of the appeal bond, according to the amount of rent actually and clearly proved to be due on the trial of the case, but in no case shall the penalty of the bond exceed fifteen thousand dollars.

Appeal bond.

Trial on appeal; evidence concerning title and boundaries; judgment not to affect title.

1242. SEC. 14. In all cases of appeals from justices of the peace and county courts, the district court shall proceed to try the cause *de novo*, and no exception to any of the proceedings before the justice or county court shall be taken or allowed, unless it shall appear that the justice of the peace or county judge had no jurisdiction of the subject matter of the suit; and the district and county courts may receive evidence respecting the title or boundaries of the premises in question, for the purpose of determining the right of possession; but judgments rendered in proceedings under this chapter shall not affect the title to any lands, tenements or other possessions for the possession of which any action may be brought under the provisions of

this chapter, and shall not be a bar to a proper action brought for the trial of the same.

Writ of restitution.

1243. SEC. 15. If upon default on trial, or by the verdict of a jury, it shall appear that the plaintiff is entitled to the possession of the premises in question, he shall have judgment for the possession of the same, and a writ of restitution shall be issued upon such judgment, unless the defendant take an appeal as provided in this chapter; and the officer to whom such writ of restitution shall be directed, shall be commanded in such writ to levy and collect the plaintiff's costs, as in other executions.

When defendant to recover costs.

1244. SEC. 16. If the plaintiff becomes non-suit, or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs.

Appeals and writs of error to supreme court; condition of bond.

1245. SEC. 17. Appeals and writs of error to the supreme court from the judgments of the district court, and writs of error to the judgment of any county court in proceedings under this chapter shall be allowed as in other cases: *Provided*, that in addition to the conditions now prescribed by law, the condition of the appeal bond shall be as required by this chapter in cases of appeal from justices of the peace and county courts to the district court.

Notice for termination of tenancy.

1246. SEC. 18. In all cases of tenancy from year to year between persons in this state, three months' notice to quit shall be deemed sufficient to terminate the same; a six months' tenancy may be terminated by a notice of one month; and ten days' notice to quit shall be sufficient to terminate a monthly tenancy: *Provided*, no notice to quit shall be necessary from or to a tenant whose term is by contract to end at a certain time.

AN ACT TO AMEND THE EXISTING LAWS OF FORCIBLE ENTRY AND DETAINER, IN RESPECT TO SERVICE OF NOTICE, DEMAND AND PROCESS.

Be it enacted by the General Assembly of the State of Colorado:

Service of notice to quit or demand for possession.

1247. SECTION 1. In all cases where notice to quit or demand for possession of real property, is now, or may hereafter be required to be given, such a notice or demand may be served by delivering a copy thereof to a person, a

member of the tenant's family found on the premises, and if no such person is found on the premises, then by posting a copy of the notice or demand in a conspicuous place upon the premises.

Service of summons.

1248. SEC. 2. Any action of forcible entry and detainer or unlawful detainer, begun in any court of this state, if the officer having the summons shall, after diligent search and careful inquiry, be unable to find the defendant within his county, he may serve the summons by leaving a copy thereof with any person, a member of the tenant's family, found upon the premises mentioned in the summons, or if no person be found upon the premises, then by posting a copy of the summons in some conspicuous place upon the premises.

Limitation of time of service.

1249. SEC. 3. In actions commenced before justices of the peace, such copy shall be delivered or posted as aforesaid at least seven days before the return day of the summons, and in actions in courts of record at least ten days before the return day of the writ, and the manner of service shall be endorsed upon the writ, and the time of serving it. The cause shall then proceed in all respects as though personally served upon the defendants.

Repeal.

1250. SEC. 4. All acts or part of acts inconsistent with this act are hereby repealed.

Approved, February 16, 1877.

CHAPTER XXXIX.

FRAUDS AND PERJURIES.

[Revised Statutes, Chapter XXXVII.]

Conveyances made with intent to defraud purchasers void as to such purchasers.

1251. SECTION 1. Every conveyance of any estate or interest in the lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers shall be void.

1252. SEC. 2. No such conveyance or charge shall be

Conveyance not fraudulent if purchaser had notice, unless grantee privy to fraud.

deemed fraudulent, in favor of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge, was privy to the fraud intended.

Conveyance with power of revocation void as against subsequent purchaser from grantor.

1253. SEC. 3. Every conveyance or charge of, or upon any estate or interest in lands, containing any provision for the revocation, determination or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor, for a valuable consideration, of any estate or interest so liable to be revoked, determined or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

In what cases conveyance by third person having power of revocation, valid

1254. SEC. 4. When the power to revoke a conveyance of any lands or the rents or profits thereof, and to re-convey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Conveyance made before vesting of power of revocation, valid from time power vests.

1255. SEC. 5. If a conveyance to a purchaser under either of the two last preceding sections shall be made, before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

What conveyances of land must be in writing.

1256. SEC. 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing.

1257. SEC. 7. The preceding section shall not be con-

strued to affect, in any manner, the power of a testator in the disposition of his real estate by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

Power of testator to devise not to be impaired, nor implied trusts prevented.

1258. SEC. 8. Every contract for the leasing for a longer period than one year, or for the sale of any lands or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to made.

Contracts for lease of more than one year, or for sale of lands, void unless in writing

1259. SEC. 9. Every instrument required to be subscribed by any party, under the last preceding section, may be subscribed by the agent of such party, lawfully authorized.

Writing may be subscribed by agent.

1260. SEC. 10. Nothing in this chapter contained shall be construed to abridge the powers of courts of equity to compel the specific performance of agreements, in cases of part performance of such agreement.

Power of courts to compel specific performance, not abridged.

1261. SEC. 11. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void, as against the creditors existing of such person.

Conveyance of chattels in trust for use of vendor, void as to his creditors.

1262. SEC. 12. In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party charged therewith:

What agreements are void, unless the writing signed by party charged.

First—Every agreement that by the terms is not to be performed within one year from the making thereof.

Second—Every special promise to answer for the debt, default or miscarriage of another person.

Third—Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

Fourth—Every contract for the sale of any goods, chattels or things in action, for the price of fifty dollars or more, shall be void, unless: First, a note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or, second, unless the buyer shall accept and receive part of such goods, or the

evidence of some of them, of such things in action; or, third, unless the buyer shall, at the time, pay some part of the purchase money.

What memorandum of auctioneer deemed a sufficient writing

1263. SEC. 13. Whenever goods shall be sold at auction, and the auctioneer shall at the time of sale enter in a sale-book a memorandum, specifying the nature and price of the property sold, the terms of sale, the name of the purchaser, and the name of the person for whose account the sale is made, such memorandum shall be deemed a note of the contract of such sale, within the meaning of the last preceding section.

Fraud conclusively presumed as against creditors, etc., where possession of chattels remains with vendor after sale.

1264. SEC. 14. Every sale made by a vendor of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things sold or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith, and this presumption shall be conclusive.

The term "creditors" construed.

1265. SEC. 15. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor, at any time whilst such goods and chattels shall remain in his possession or control.

Subscription of writing by agent

1266. SEC. 16. Every instrument required by any of the provisions of this chapter to be subscribed by any party, may be subscribed by the lawful agent of such party.

Conveyances with intent to delay, hinder or defraud creditors.

1267. SEC. 17. Every conveyance or assignment in writing or otherwise, of any estate or interest in lands, or in goods or things in action, or of any rents and profits issuing thereupon, and every charge upon lands, goods or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay or defraud creditors or other persons, of their lawful suits, damages, forfeitures, debt or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered with the like intent, as against the person so hindered, delayed or defrauded, shall be void.

1268. SEC. 18. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent lawfully authorized, shall be void. Assignment of trust not in writing, void.

1269. SEC. 19. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this chapter, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives or assignees of such creditors or purchasers. Against whom instruments declared to be void, shall be void.

1270. SEC. 20. The question of fraudulent intent, in all cases arising under the provisions of this title, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be adjudged fraudulent against creditors or purchasers solely on the ground that it was not founded on a valuable consideration. Fraud, a question of fact; want of valuable consideration in conveyance not sufficient evidence.

1271. SEC. 21. The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. Purchaser for valuable consideration and without notice, not impaired in his right.

1272. SEC. 22. The term "lands," as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments;" and the term "estate and interest in lands," shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent in lands as above defined. Construction of terms "lands," and "estate and interest in lands"

1273. SEC. 23. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered. Construction of term "conveyance."

CHAPTER XL.

FUGITIVES FROM JUSTICE.

[Revised Statutes, Chapter XXXVIII.]

Duties of governor on demand of other state or territory for fugitive from justice.

1274. SECTION 1. Whenever the executive of any other state or of any territory of the United States shall demand of the executive of this state any person as a fugitive from justice, and shall have complied with the requisitions of the act of congress in that case made and provided, it shall be the duty of the executive of this state to issue his warrant under the seal of the state to apprehend the said fugitive, directed to any sheriff, coroner, or constable of any county in this state, or other persons whom the said executive may think fit to intrust with the execution of said process. Any of the said persons may execute such warrant anywhere within the limits of this state, and convey such fugitive to any place within this state which the executive in his warrant shall direct.

Demand of this state for fugitive from justice, from other states and territories.

1275. SEC. 2. Whenever the executive of this state shall demand a fugitive from justice from the executive of any other state or territory, he shall issue his warrant under the seal of the state, to some messenger, commanding him to receive the said fugitive and convey him to the sheriff of the proper county where the offense was committed.

How expenses paid.

1276. SEC. 3. The expenses which may accrue under the last preceding sections, being first ascertained to the satisfaction of the executive, shall on his certificate be allowed and paid out of the state treasury on the warrant of the auditor.

Proceedings in case of person charged here with commission of felolny in other state or territory

1277. SEC. 4. Whenever any person within this state shall be charged upon the oath or affirmation of any credible witness, before any judge or justice of the peace, with the commission of any murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting, in any other state or territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If upon examination, it shall appear to the satisfaction of such judge or justice that the said person is guilty of the offense alleged against him, it shall be the

duty of the judge or justice to commit him to the jail of the said county, or if the offense is bailable according to the laws of this state, to take bail for his appearance at the next district court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner, and those who bring him, to writing, and to return the same to the next district court of the county where such examination is had, as in other cases, and shall also send a copy of the examination and proceeding to the executive of this state, as soon thereafter as may be. If in the opinion of the executive of this state, the examination so furnished contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the state or territory where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand. When such demand shall be made, the executive of this state shall forthwith issue his warrant under the seal of the state, to the sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this state. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the state, and to surrender him agreeably to said warrant.

Discharge or continuance of recognizance by district courts.

1278. SEC. 5. In cases where a party shall have been admitted to bail, and shall appear at the district court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of said court to discharge the said recognizance, or continue it, according to the circumstances of the case, such as the distance of the place where the offense is alleged to have been committed, the time that hath intervened since the arrest of the party, and the strength of the evidence against him. If no demand be made upon the sheriff for him within that time, he shall be discharged from prison, or exonerated from his recognizance, as the case may be.

Forfeiture inures to benefit of state.

1279. SEC. 6. If the recognizance shall be forfeited, it shall inure to the benefit of the state.

Security for costs to be taken in case of complaint; proceedings on bond.

1280. SEC. 7. In all cases where complaint shall be made, as aforesaid, against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive, which security shall be by bond to the clerk of the district court, conditioned for the payment of costs, as above, which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the district court, and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee-bill as in other cases, to be served on the persons named in the bond, or any of them, which fee-bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next district court to be holden in and for that county, nor any cause then shown why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee-bill has been served, and when the said fees are collected, shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to one dollar for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services. Nothing herein contained shall prevent the clerk from instituting suits on said bonds in the ordinary mode of judicial proceedings, if he shall deem it proper.

Rewards for apprehension of fugitive.

1281. SEC. 8. If any person charged with or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting, shall break prison, escape or flee from justice, or abscond and secrete himself, in such cases it shall be lawful for the governor, if he shall judge it necessary, to offer any reward not exceeding two hundred dollars for apprehending and delivering such person unto custody of such sheriff, or other officer, as he may direct. The person or persons so apprehending and delivering any such person as aforesaid, producing to the governor the

sheriff's or justice's receipt for the body, it shall be lawful for the governor to certify the amount of such claim to the auditor, who shall issue his warrant on the treasury for the same.

CHAPTER XLI.

GAME.

AN ACT FOR THE PROTECTION OF WILD GAME AND INSECTIVEROUS BIRDS.

Be it enacted by the General Assembly of the State of Colorado:

1282. SECTION 1. No person shall kill, ensnare, net or trap within this state, any quail, wild turkey, curlew, plover, lark, dove, whip-poor-will, finch, thrush, sparrow, wren, martin, swallow, snow-bird, bobolink, red-winged black-bird, crow, raven, turkey-buzzard, robin, or any insectiverous birds, except, that partridge, pheasant, prairie chicken, prairie hen or grouse, may be shot from October 1st to November 15th of each year; and if at any time, any person shall be found in possession of any partridge, pheasant, prairie hen, prairie chicken or grouse, at any other time than between the dates above mentioned, or any others of the fowls or birds mentioned in this section at any time, it shall be *prima facie* evidence that the same was killed, netted, ensnared or trapped by such person, in violation of the provisions of this act; *provided*, that this section shall not be construed to prohibit any person importing or dealing in quail, partridge, prairie hen, prairie chicken, pheasant, wild turkey, imported into this state from any other state or territory; *and provided further*, that this act shall not prohibit any professional taxidermist from killing birds or animals for preservation in cabinets or museums. And such professional taxidermist shall be exempt from the penalties of the following sections, upon making satisfactory proof that the birds or animals so killed have been preserved as aforesaid.

Insectiverous birds may not be killed, excepting grouse at certain seasons.

Possession: evidence of killing.

Dealing in imported game birds not prohibited.

Taxidermists may be exempt.

1283. SEC. 2. Any person who shall violate any of the provisions of the first section of this act, shall be guilty

Penalty for violation of provisions of section one.

of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than five dollars, nor more than fifty dollars, with costs of suit, and shall be prosecuted and punished in the same manner as in other cases of misdemeanor; one-half of the fine in such cases shall be paid to the person informing against such offender, and the other half to the treasurer of the county in which the offense was committed, and become a part of the school fund; *provided*, that if such informant shall not demand the same within thirty days after such fine shall be paid, or collected, the whole of such fine shall be paid to such treasurer and applied to such school fund.

At what times elk, buffalo, deer, fawn, antelope, mountain sheep and bison may be killed.

1284. SEC. 3. No person shall kill, ensnare or trap, any elk, buffalo, deer, fawn, antelope, mountain sheep or bison, within this state, between the first day of January and the first day of September in each and every year. Any person offending against the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction thereof, be fined in a sum not less than twenty-five dollars for each elk, buffalo, deer, antelope, mountain sheep or bison so unlawfully shot, trapped or ensnared; one-half of said fine shall be paid to the informer and the other half to the school fund, as provided in section two of this act.

Penalty; disposition of fine.

Such animals killed by dogs.

And if any of the above named animals, shall be killed by a dog or dogs, the owner or keeper of such dog or dogs shall be held responsible, and may be punished in the same manner as if he had killed the animal himself. And it shall be unlawful for any person or persons to ship out of this state, any of the game birds or animals mentioned in this act at any time, for speculative purposes. Any one so offending shall be deemed guilty of amisdemeanor, and upon conviction thereof shall be fined in a sum not less than double the value of the game so shipped out of the state, or may be imprisoned, at the discretion of the court, not to exceed sixty days, or both fine and imprisonment.

Penalty for shipping game out of state.

Killing, etc., of such animals for purposes of food.

1285. SEC. 4. It shall be unlawful for any person or persons, at any other time than that specified in the preceding section, to kill, destroy or have in possession, any animal named in the foregoing section, for any purpose or under any pretext whatsoever, except for food; and then

only when necessary for immediate use, governed in amount and quantity by the reasonable necessities of the person or persons killing such animal.

Killing, etc., of game in enclosure of other person, or entering with gun.

1286. SEC. 5. It shall not be lawful for any person to kill, ensnare or trap in the enclosure of any other person, any elk, deer, antelope, mountain sheep, or any game whatsoever at any time, without the consent of the proprietor or owner of said enclosure, or enter such enclosure with a gun for the purpose of hunting, without the consent of the owner. Any one violating the provisions of this section shall be subject to a fine not to exceed one hundred dollars, and not less than twenty-five dollars for every such offense so committed; said fine shall be paid into the school fund of the county in which said offense was committed, and in case of refusal or neglect of any person so convicted, to pay the fine above stated, he shall be confined in the county jail one day for every three dollars thereof, until said fine shall be discharged.

Penalty and disposition of fine.

Making of affidavit and issuing of warrant.

1287. SEC. 6. For the more certain detection and punishment of violations of this law, it is hereby made the duty of the county commissioners, sheriffs and constables, or any other person of the several counties, whenever a violation of its provisions is brought to their knowledge, to file or cause to be filed an affidavit before a justice of the peace or other competent tribunal, charging the person with the offense committed. And thereupon a warrant shall issue for the arrest of the person so charged, and trial shall be had as in other cases; and this section shall be a full protection to any such officer who makes the affidavit, or causes the same to be made, in good faith or upon the statement of a reputable citizen of the county.

Premium for killing of hawks.

1288. SEC. 7. That any person who shall kill any hawk or any number of hawks within this state, shall receive a premium of twenty-five cents for each hawk so killed, to be paid out of the state treasury, which premium shall be paid by the county treasurer upon the presentation of head of said hawk or hawks, and the amount so paid out by said county treasurer shall be credited to said county treasurer by the state treasurer, upon the sworn statement of said county treasurer as to the number of hawks killed and paid for in his county.

Repeal.

1289. SEC. 8. All prior acts inconsistent with the provisions of this act are hereby repealed. Inasmuch as there is not now in existence, a law sufficient to prevent the killing of game and insectiverous birds in this state, it is the sense of this general assembly that an emergency exists requiring this act to take effect without delay, therefore this act shall become a law immediately upon its passage.

Emergency.

Approved, March 15, 1877.

CHAPTER XLII.

GENERAL ASSEMBLY.

[Revised Statutes, Chapter LI.]

Temporary organization.

1290. SECTION 1. At two o'clock in the afternoon of the day of the meeting of the legislative assembly, the chief clerk or secretary of the previous session, or in case of his absence, some person claiming to be elected a member, shall call the house to which he belongs, to order, and the persons present, claiming seats in the house, as members, shall elect a clerk for the time being.

Roll of members.

1291. SEC. 2. The clerks of each house shall file the certificates presented by the members, each for his own house, and make a roll of the members who thus appear to be elected, and the persons thus appearing to be elected members shall proceed to elect such other officers as may be required for the time being.

Committee of credentials, and permanent organization.

1292. SEC. 3. When the houses are temporarily organized, they shall elect a committee of three, on the part of each house, by ballot, which committee shall report upon the credentials of those claiming to be elected members in their respective houses; and when such report is made, those reported as elected shall proceed to the permanent organization of their respective houses; and each house shall be the sole judge of the election returns and qualifications of its own members.

Members not to be questioned elsewhere for words spoken in debate.

1293. SEC. 4. No member of the legislative assembly shall be questioned in any other place, for any speech or word spoken in debate in either house.

AN ACT TO PRESCRIBE THE NUMBER, DUTIES AND COMPENSATION OF THE OFFICERS AND EMPLOYÉS OF EACH HOUSE OF THE GENERAL ASSEMBLY.

Be it enacted by the General Assembly of the State of Colorado:

Officers and employés designated.

1294. SECTION 1. That until otherwise provided by law, the officers and employés of the respective houses of the general assembly of Colorado shall be as follows, to wit: Of the senate—a secretary, assistant secretary, sergeant-at-arms, assistant sergeant-at-arms, engrossing clerk, assistant engrossing clerk, enrolling clerk, messenger, door keeper, chaplain, janitor and two pages. Of the house of representatives—a chief clerk, assistant clerk, sergeant-at-arms, assistant sergeant-at-arms, engrossing clerk, assistant engrossing clerk, enrolling clerk, messenger, door keeper, chaplain, janitor and four pages; and the officers and employés of each house shall perform the duties usually performed by like officers and employés, and such other duties as may be required by each house of its respective officers and employés.

Salaries of officers and employés.

1295. SEC. 2. The said secretary and chief clerk shall each receive six dollars per day, and the said assistant secretary and assistant clerk shall each receive as compensation five dollars per day, for each and every day of service, including seven days after each session of the general assembly, for completing the records of the proceedings of the session. The said messengers, door keepers and janitors shall each receive three dollars per day, chaplains two dollars, and the pages one and one-half dollars for each day of service, and all other officers and employés provided for in this act, each four dollars per day, except interpreters, assistant door keepers, and assistant janitors, if appointed.

Committee clerks, interpreters, assistant door-keepers and janitors; pay of.

1296. SEC. 3. Either house may, by resolution, employ such other clerks and assistants as may be found or deemed necessary at any time for the business of such house, and either house may, by resolution as aforesaid, provide a clerk for such of its committees as may at any time be found to require a clerk to assist in the transaction of business, and either house may by resolution provide for the employment of one or more interpreters, if the same shall be deemed necessary, which interpreters shall each

receive three dollars per day for each day of service rendered Either house may also employ an assistant door keeper and assistant janitor, if the same or either of them shall be required, and their compensation shall be two dollars and a half per day each, for each day of service rendered. Officers and employés so appointed by either house by resolution as aforesaid, shall be considered in all respects as holding by authority of law after being so appointed.

Certificate of service.

1297. SEC. 4. Each officer and employé at each session of the general assembly shall receive from the presiding officer of the house to which he belongs, a certificate setting forth the number of days of service rendered by such officer or employé. Such time of service to be computed from the day of his or her election or appointment, until the end of his or her term of service; and such certificate when presented to the auditor, shall entitle the holder thereof to a warrant for the amount due, and the auditor shall draw his warrant on the treasurer accordingly.

Provision for officers and employés of first general assembly

1298. SEC. 5. The officers and employés already selected by the respective houses of the present general assembly, shall be considered as properly elected without further action on the part of either house.

Emergency.

1299. SEC. 6. Inasmuch as there may be doubts as to whether or not the officers and employés of the present general assembly can receive compensation until this act takes effect, therefore this act shall take effect immediately.

Approved, November 23, 1876.

AN ACT REGULATING THE MANNER IN WHICH MEMBERS OF THE GENERAL ASSEMBLY SHALL DRAW THEIR PAY.

Be it enacted by the General Assembly of the State of Colorado:

Certificates of attendance and mileage.

1300. SECTION 1. Each member of the general assembly shall receive from the presiding officer of the house to which he belongs, a certificate setting forth the number of days of attendance of such member, and the amount due for mileage, and such certificate when presented to the auditor shall entitle the holder thereof to a warrant for the amount due, and the auditor shall draw his warrant accordingly.

1301. SEC. 2. Inasmuch as it is believed that the present general assembly will adjourn *sine die* within ninety days from the passage of this act, with no provision for the payment of its members except as herein provided, therefore, this act shall take effect and be in force from and after its passage. Emergency.

Approved, December 23, 1876.

AN ACT TO PROVIDE FOR THE COMPENSATION OF THE MEMBERS OF THE GENERAL ASSEMBLY

Be it enacted by the General Assembly of the State of Colorado:

1302. SECTION 1. That hereafter each member of the general assembly of this state shall receive as compensation for his services the sum of four dollars for each days' attendance, and fifteen (15) cents for each mile necessarily traveled in going to and from the seat of government by the most usually traveled route. *Per diem* compensation and mileage of members of general assembly.

Approved, March 7, 1877.

CHAPTER XLIII.

GUARDIAN AND WARD.

[Revised Statutes, Chapter XL.]

1303. SECTION 1. Courts of probate in their respective counties, shall admit orphan minors above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years. When minors may choose guardians; when court to appoint.

1304. SEC. 2. Whenever it shall be represented to said court that any orphan minor above the age of fourteen years has not a guardian, it shall be the duty of said court to issue a notification to such minor to appear before the said court, at a time therein specified, and choose a guardian; and if such minor shall neglect or refuse to appear, or appearing, shall neglect to choose a guardian, the said court shall appoint one for such minor, as if such minor were under the age of fourteen years. Appointment of guardian by court if minor neglects or refuses to choose on notification.

Guardian of minor having estate not derived from father; if other than father, to have charge of estate, but not control of person of minor.

1305. SEC. 3. When a minor, having a father living, shall be entitled to, or possessed of, any estate, real or personal, not derived from his or her father, the said court of probate shall notify the father to appear and show cause why a guardian for such minor shall not be appointed; and if sufficient reason be not shown, may appoint the father, if he be a proper person; if not, then such other person as the minor, if of the age of fourteen years, may choose. If such minor shall refuse or neglect, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor; and when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

Guardians to prosecute and defend for their wards.

1306. SEC. 4. Guardians, by virtue of their office as such, shall be allowed in all cases to prosecute and defend for their wards.

Bond of guardian; amount, security and condition.

1307. SEC. 5. The court of probate shall take, of each guardian appointed under this chapter, bond, with good security, in a sum double the amount of the minor's estate, real and personal, conditioned as follows: The condition of this obligation is such, that if the above bounden A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian, according to law, and shall render a fair and just account of his guardianship, to the county court of the county of ———, from time to time, as he shall be thereto required by said court, and comply with all the orders of said court, lawfully made, relative to the goods, chattels, and moneys of such minor, and render and pay to such minor all moneys, goods and chattels, title papers, and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall be thereto entitled, or to any subsequent guardian, should such court so direct, then this obligation shall be void, otherwise to remain in full force and virtue. Which bond shall be taken, to the people of the state of Colorado, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one or more of the obligors, and to the use and benefit of any

Not to be void on first recovery.

person entitled by a breach thereof, until the whole penalty shall be recovered thereon. In all cases of any person being appointed guardian for more than one ward, at one time, the judge of probate shall include all in one bond.

Accounts of guardians; supplementary security.

1308. SEC. 6. Courts of probate shall have power, in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts, upon oath, touching their guardianship, to said courts for adjustment, and shall have power to compel such guardians to give supplementary security whenever it shall judge proper, and in default thereof to remove such guardians.

Removal of guardian for cause; delivery of property and effects of minor to successor.

1309. SEC. 7. The court of probate, in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered upon record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this chapter; and when any guardian shall be removed, or die, and a successor be appointed, the court shall have power to compel such guardian so removed, or the executors or administrators of a deceased guardian, to deliver up to such successor all goods, chattels, moneys, title papers or other effects belonging to such minor, which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who may have the same, and upon failure, to commit the party offending to prison until he, she or they comply with the order of the court.

Powers and duties of guardians in relation to moneys and estate of wards.

1310. SEC. 8. Guardians shall have power to demand, sue for and receive all moneys belonging to their wards, from executors or administrators, as soon as the same may be collected; or of any other person or persons in whose hands or possession the same may be; and it shall moreover be their duty to put to interest the moneys of their wards, upon mortgage security, to be approved by the court; which letting shall always be for one year, and at the end of each year the interest shall be added and made part of the principal; and said guardian shall also have

power to lease the real estate of the ward, upon such terms and for such length of time as the court of probate shall direct: *Provided,* such leasing shall never be for a longer time than during the minority of the ward, and the minority of females shall cease at the age of eighteen years.

Education and nurture of ward; payments for out of ward's estate.

1311. SEC. 9. The guardian shall have power, under the direction of the court of probate, to superintend the education and nurture of the ward, and for that purpose may pay out such portions of the ward's money as the court of probate shall from time to time by order direct: *Provided,* that the rents and profits arising from his estate, and next the interest on the ward's money, shall always be first resorted to for the education and nurture of the ward.

Sale of real estate of ward.

1312. SEC. 10. The district court may, for just and reasonable cause, being satisfied that the guardian has faithfully applied all the personal estate, order the sale of the real estate of the ward, on the application of the guardian by petition in writing stating the facts, and having given notice to all persons concerned, of such intended application, in some public newspaper printed in the state, or by setting up written notices in three of the most public places in the county, at least three weeks before the sitting of the court; such order may enable the guardian to sell and convey the real estate for the support and education of the ward, or to invest the proceeds in other real estate. The court, in such order, shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit, and require such security from the guardian and purchaser as the interest of the ward may require. It shall be the duty of the guardian making such sale, as soon as may be, to make return of such proceedings to the court granting the order, which, if approved by the court, shall be recorded, and shall vest in the purchasers all the interest the ward had in the estate so sold; application for the sale of such real estate shall be made to the court of the county where the whole or part of the estate shall be situated.

1313. SEC. 11. An account of all moneys received by any guardian for any sale of real estate of any minor, as afore-

In what manner moneys received from sale of ward's estate to be accounted for.

said, shall be returned on oath, by such guardian, to the court of probate of the county where letters of guardianship were obtained, and such moneys shall be accounted for, and shall be subject to the order of the court of probate, in like manner as other moneys belonging to such minor.

Appeals from judgment of court of probate.

1314. SEC. 12. Appeals shall be allowed, in all cases, from the order or judgment of the court of probate, the same in manner as is provided by law relative to wills and testaments, for executors and administrators and the settlement of intestates' estates.

Minors may sue by next friend; bond of cost to be filed.

1315. SEC. 13. Minors may bring suits in all cases whatever, by any person they may select as their next friend; and the person so selected, shall file bond, with the clerk of the district court, or justice of the peace, before whom the suit may be brought, acknowledging himself bound for all costs that may accrue and legally devolve on such minor; after such bond shall have been so filed, said suit shall progress to final judgment and execution, as in other cases.

Education of wards.

1316. SEC. 14. Guardians shall educate their wards; and it is hereby made the duty of all civil county officers to give information to the court of probate of neglect or omission of any guardian to educte his or her ward; *provided,* when there are not moneys sufficient to teach the ward to read and write, and ground rules of arithmetic, and the guardian refuses and neglects to have him so educated, the court shall have power to put out to any other person, the ward, for the purpose of having the same so educated; the judge of probate shall, in all cases when information is made of the neglect of any guardian to educate his or her ward, and on the facts being established, to remove such guardian, and appoint a suitable person to act as guardian, and superintend the education of such minor orphan.

How money of wards may be loaned.

1317. SEC. 15. Guardians shall have power to loan out the moneys of their wards, at interest, in sums not exceeding one hundred dollars, on personal security, to be approved by the judge of probate: *Provided,* it shall not be let for a longer time than twelve months without renewal, and an approval of the security by the court, and if neg-

lected longer, it shall be at the responsibility of the guardian. In all cases of any person being appointed guardian for more than one ward, at one time, the judge of probate shall include all in one bond.

Confirmation of guardians.

1318. SEC. 16. Guardians on final settlement shall be allowed such fees and compensation for their services as shall seem reasonable and just to the judge of probate, not exceeding what are or shall be allowed by law to administrators.

Disposition of tuition and custody of minor by deed or will of parent.

1319. SEC. 17. Every father of sound mind and memory of a child likely to be born, or of any living child under the age of twenty-one years, and unmarried, may, by his last deed or will duly executed, dispose of the custody and tuition of such child during its minority, or for a less time, to any person or persons in possession or remainder; and every mother of sound mind and memory, being sole, may, in like manner, dispose of the custody and tuition of a child living, if a father has made no such disposition, or in any other manner restrained the right of the mother.

Rights, duties and powers of custodian of minor under will or deed

1320. SEC. 18. Every such disposition, from the time it shall take effect, shall invest in the person or persons to whom it shall be made, all the rights and powers, and subject him or them to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody and tuition of such minor: *Provided*, that the rights, powers, duties and obligations of such person or persons may be restrained and regulated by the person making such deed or last will, as aforesaid.

Maintenance of action for attention of minor by custodian; custody and management of real estate.

1321. SEC. 19. Any person to whom the custody of any minor is so disposed of, may take the custody and tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor; he shall also take the custody and management of the real and personal estate of such minor, unless restrained by the deed or will, as aforesaid, during the time for which such disposition shall have been made, and bring such actions in relation thereto as a guardian appointed under the provisions of the laws of this state.

1322. SEC. 20. Guardians appointed under the provis-

ions of this chapter, shall be subject to removal, upon complaint of any person in behalf of the minor, to the district court of the county in which such guardian may reside, and proof made of mal-conduct or misbehavior in the performance of his duties, or of a failure to perform his duties; and upon the removal of a guardian, the said court is hereby vested with the power to appoint another guardian, and to make all such orders as may be necessary to compel the guardian removed to deliver over to his successor the custody of the minor, and to account for the estate, and pay over all moneys belonging to the ward, and to compel such successor to execute a bond, with good security, in such penal sum, and with such conditions as the court may deem necessary for the security of the rights of the minor; and the said court shall also have power, upon application of any person in behalf of the minor, to require all guardians appointed under the provisions of this chapter, by the father or mother, or by the court, to give bond and security, in such penalty and with such conditions as the court may deem necessary for the security and protection of the minor, and of his or her estate.

Removal of guardian and appointment of successor by district court.

CHAPTER XLIV.

HABEAS CORPUS.

[Revised Statutes, Chapter XLI.]

1323. SECTION 1. If any person shall be committed or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the supreme or district courts, in term time, or any judge thereof in vacation, for a writ of *habeas corpus;* which application shall be in writing, and signed by the prisoner or some person on his behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused

Who may grant writ; proceedings necessary therefor.

or neglected to be given. The said court or judge to whom the said application shall be made, shall forthwith award the said writ of *habeas corpus*, unless it shall appear from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner relieved; which said writ, if issued by the court, shall be under the seal of the court, if by a judge, under the hand of a judge, and shall be directed to the person in whose custody the prisoner is detained, and made returnable forthwith; to the intent, that no officer, sheriff, jailer, keeper or other person, to whom such writ shall be directed, may pretend ignorance thereof, every such writ shall be indorsed with these words, "By the *habeas corpus* act;" and whenever the said writ shall, by any person, be served upon the sheriff, jailer or keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under-officers or deputies, at the jail or place where the prisoner is detained, he, or some of his under-officers or deputies, shall, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the court or judge awarding the said writ, and indorsed thereon, not exceeding fifteen cents per mile, and upon sufficient security given to pay the charges of carrying him back, if he shall be remanded, make return of such writ, and bring, or cause to be brought, the body of the prisoner, before the court or judge who granted the writ, or in case of the adjournment of the said court or absence of the judge, then before any other of the judges aforesaid, and certify the true cause of his imprisonment, within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable; if beyond the distance of twenty miles, and not above one hundred miles, then within ten days; and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ as aforesaid, and not longer.

1324. SEC. 2. When any person, not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his or her liberty, under

any color or pretense whatever, he or she may apply for a writ of *habeas corpus* as aforesaid, in writing, signed by the party or some person in his behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she is detained; which application or petition shall be verified by the oath or affirmation of the party applying, or some other person on his or her behalf; if the confinement or restraint is by virtue of any judicial writ or process or order, a copy thereof shall be annexed thereto, or an affidavit made that the same has been demanded and refused; the same proceedings shall thereupon be had in all respects as are directed in the preceding section.

Application for writ by person restrained of liberty, but not for any criminal matter.

1325. SEC. 3. Upon the return of the writ of *habeas corpus*, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The prisoner may deny any of the material facts set forth in the return, or may allege any fact to show either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge; which allegations or denials shall be made on oath. The said return may be amended by leave of the court or judge, before or after the same is filed, as also may all suggestions made against it, that thereby all material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the facts by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner and the person who holds him in custody; and shall dispose of the prisoner as the case may require. If it appear that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

Proceedings in hearing on return of writ.

First—Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum, or person.

Second—Where, though the original imprisonment was lawful, yet, by some act, omission, or event, which has subsequently taken place, the party has become entitled to his discharge.

Third—Where the process is defective in some substantial form required by law.

Fourth—Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process or orders for imprisonment or arrest issue.

Fifth—Where, although in proper form, the process has been issued or executed by a person unauthorized to issue or execute the same, or where the person having the custody of the prisoner, under such process, is not the person empowered by law to detain him.

Sixth—Where the process appears to have been obtained by false pretense or bribery.

Seventh—Where there is no general law, nor any judgment, order or decree of a court to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding.

No court or judge, on the return of a *habeas corpus*, shall in any other manner inquire into the legality or justice of a judgment or decree of a court legally constituted. In all cases where the imprisonment is for a criminal, or supposed criminal matter, if it shall appear to the said court or judge that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been informally made, or without due authority, or the process may have been executed by a person not authorized, the court or judge shall make a new commitment in proper form, and directed to the proper officer, or admit the party to bail, if the case be bailable.

Recognizance of prisoner and witnesses.

1326. SEC. 4. When any person shall be admitted to bail on *habeas corpus*, he shall enter into recognizance, with one or more securities, in such sum as the court or judge shall direct, having regard to the circumstances of the prisoner and the nature of the offense, conditioned for his or her appearance at the next district court to be holden in and for the county where the offense was committed, or where the same is to be tried. Where any court or judge shall admit to bail or remand any prisoner, brought before him or them on any writ of *habeas corpus*, it shall be the

duty of the said court or judge to bind all such persons as do declare anything material to prove the offense with which the prisoner is charged, by recognizance, to appear at the proper court having cognizance of the offense, on the first day of the next term thereof, to give evidence touching the said offense, and not to depart the said court without leave; which recognizance, so taken, together with the recognizance entered into by the prisoner, when he is admitted to bail, shall be certified and returned to the proper court, on the first day of the next succeeding term thereof; if any such witness shall neglect or refuse to enter into a recognizance as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail, until he shall enter into such recognizance, or he be otherwise discharged by due course of law; if any judge shall neglect or refuse to bind any such witness or prisoner, by recognizance, when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

Statement of causes to accompany prisoner remanded to prison.

1327. SEC. 5. When any prisoner, brought up on a *habeas corpus*, shall be remanded to prison, it shall be the duty of the court or judge remanding him, to make out and deliver to the sheriff, or other person to whose custody he shall be remanded, an order, in writing, stating the cause or causes of remanding him. If such prisoner shall obtain a second writ of *habeas corpus*, it shall be the duty of such sheriff, or other person to whom the same shall be directed, to return therewith the order aforesaid; and if it shall appear that the said prisoner was remanded for any offense adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

Prisoner not to be discharged on second writ of *habeas corpus*, if clearly charged with criminal offense.

1328. SEC. 6. It shall not be lawful for any court or judge, on a second writ of *habeas corpus* obtained by such prisoner, to discharge the said prisoner, if he is clearly and specifically charged in the warrant of commitment with a criminal offense; but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offense is bailable by law, or remand him to prison, where the offense is not bailable, or where such prisoner shall fail to give the bail required.

In what cases prisoner discharged on writ of *habeas corpus*, may be again restrained

1329. SEC. 7. No person who has been discharged by order of a court or judge, on a *habeas corpus*, shall be again imprisoned, restrained or kept in custody for the same cause, unless he be afterwards indicted for the same offense; nor unless by the legal order or process of the court wherein he is bound by recognizance to appear. The following shall not be deemed to be the same cause:

First—If, after a discharge for a defect of proof, or on any material defect in the commitment, in a criminal case, the prisoner should be again arrested on sufficient proof, and committed by legal process for the same offense.

Second—If, in a civil suit, the party has been discharged for any illegality in the judgment or process, and is afterwards imprisoned by legal process, for the same cause of action.

Third—Generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law, the party may be a second time imprisoned, if the cause be legal, and the forms required by law, observed.

Discharge of person committed for criminal matter, and not admitted to bail or tried before second term

1330. SEC. 8. If any person shall be committed for a criminal or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offense, the prisoner shall be set at liberty by the court, unless the delay shall happen on the application of the prisoner. If such court at the second term shall be satisfied that the due exertions have been made to procure the evidence for and on behalf of the people, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term. If any such prisoner shall have been admitted to bail for a crime other than a capital offense, the court may continue the trial of said cause to a third term if it shall appear by oath or affirmation that the witnesses for the people of the state are absent, such witnesses being mentioned by name, and the court shown wherein their testimony is material.

1331. SEC. 9. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any pris-

oner on *habeas corpus* under this chapter, out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried; except it be to convey him or her into the county where the offense with which he or she stands charged, is properly cognizable.

Removal of prisoner out of county where confined.

1332. SEC. 10. Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper or other person, or his under-officer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison or custody into any other prison or custody, unless it be by *habeas corpus*, or some other legal writ; or where the prisoner shall be delivered to the constable or other inferior officer to be carried to some common jail; or shall be removed from one place to another within the county, in order to his discharge or trial in due course of law; or in case of sudden fire, infection or other necessity; or where the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the chapter concerning jails and jailers; or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of the United States or territories; if any person shall after such commitment as aforesaid, make out, sign or countersign any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or aggrieved party a sum not exceeding three hundred dollars, to be recovered by the prisoner or party aggrieved, in the manner hereinafter mentioned.

Removal of person committed to prison, or in custody, to any other prison or custody; forfeiture to prisoner therefor.

1333. SEC. 11. Any judge empowered by this chapter to issue writs of *habeas corpus*, who shall corruptly refuse to issue such writ when legally applied to, in a case where such writ may lawfully issue, or who shall for the purpose of oppression, unreasonably delay the issuing of such writ, shall for every such offense, forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars.

Penalty for refusing or unreasonably delaying to issue writ.

1334. SEC. 12. If any officer, sheriff, jailer, keeper or other person to whom any such writ shall be direccted, shall neglect or refuse to make the returns as aforesaid, or

Penalty for neglect or refusal to obey writ, or make returns.

to bring the body of the prisoner according to the command of said writ, within the time required by this chapter, all and every such officer, sheriff, jailer, keeper or other person, shall be deemed guilty of contempt of the court or judge who issued said writ; whereupon the said court or judge may and shall issue an attachment against such officer, sheriff, jailer, keeper or other person, and cause him or them to be committed to the jail of the county, there to remain without bail or mainprise, until he or they shall obey the said writ; such officer, sheriff, jailer, keeper or other person shall also forfeit to the prisoner or aggrieved party a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

Transfer or concealment of prisoner to avoid operation of writ.

1335. SEC. 13. Any one having a person in his custody, or under his restraint, power or control, for whose relief a writ of *habeas corpus* is issued, who with the intent to avoid the effect of such writ shall transfer such person to the custody, or place him or her under the control of another, or shall conceal him or her, or change the place of his or her confinement, with intent to avoid the operation of such writ, or with intent to remove him or her out of this state, shall forfeit for every such offense one thousand dollars, and be imprisoned not less than one year, nor more than five years. In any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of *habeas corpus* had issued at the time of the removal, transfer or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

Penalty for neglect to give prisoner copy of process under which committed.

1336. SEC. 14. Any sheriff, or his deputy, any jailer or coroner, having custody of any prisoner committed on a civil or criminal process of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment by virtue of which he is imprisoned, within six hours after the demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

Penalty for arrest or detention of person discharged on writ of *habeas corpus*.

1337. SEC. 15. Any person who, knowing that another has been discharged by order of a competent judge or tribunal, on a *habeas corpus*, shall, contrary to the provisions of this chapter, arrest or detain him again, for the same

cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offense, and one thousand dollars for every subsequent offense.

To whose use penalties recovered.

1338. SEC. 16. All the pecuniary forfeitures under this chapter shall inure to the use of the party for whose benefit the writ of *habeas corpus* issued, and shall be sued for and recovered, with costs, in the name of the state, by every person aggrieved.

Plea in prosecution for such penalties.

1339. SEC. 17. In any action or suit, for any offense against the provisions of this chapter, the defendant or defendants may plead the general issue, and give the special matter in evidence.

Action for damages.

1340. SEC. 18. The recovery of the said penalties shall be no bar to a civil suit for damages.

Issuing of writs of *habeas corpus* for the purpose of bringing person to testify, or be surrendered in discharge of bail.

1341. SEC. 19. The supreme and district courts within this state or the judges thereof, in vacation, shall have power to issue writs of *habeas corpus*, for the purpose of bringing the body of any person confined in any jail within the same, before them, to testify or be surrendered in discharge of bail. When a writ of *habeas corpus* shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this state out of the county in which such principal or witness is required to be surrendered or to testify, the writ may run into any county in this state, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered or his bail discharged, or a person testifying as aforesaid, shall by the officer executing such writ be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of *habeas corpus* shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the courts respectively.

CHAPTER XLV.

HOLIDAYS.

AN ACT TO DESIGNATE THE HOLIDAYS TO BE OBSERVED IN THE ACCEPTANCE AND PAYMENT OF BILLS OF EXCHANGE AND PROMISSORY NOTES, IN THE HOLDING OF COURTS, AND RELATIVE TO THE CONTINUANCE OF SUITS.

Be it enacted by the General Assembly of the State of Colorado:

Designation of certain days.

1342. SECTION 1. That the following days, viz: the first day of January, commonly called New Year's day; the twenty-second day of February, commonly called Washington's birthday; the thirtieth day of May, commonly called Decoration day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas day, and any day appointed or recommended by the governor of this state, or the president of the United States, as a day of fasting and prayer or thanksgiving, shall, for all purposes whatsoever, as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, made after this act, shall take effect, also, for the holding of courts, be treated and considered as is the first day of the week, commonly called Sunday; *provided*, that in case any of the said holidays shall fall upon a Sunday, then the Monday following shall be considered as the said holiday, and all notes, bills, drafts, checks or other evidence of indebtedness, falling due or maturing on either of said days, shall be deemed as due, or having matured on the day previous to the first of said days; and in case the return or adjourned day in any suit, matter or hearing before any courts, shall come on any day before mentioned, such suit, matter or proceeding commenced or adjourned, as aforesaid, shall not by reason of coming on any such day, abate, but the same shall stand continued on the next succeeding day, at the same time and place, unless the next day shall be the first day of the week, when in such case the same shall stand continued to the day next succeeding, at the same time and place. *Provided further*, nothing in this act shall prevent the issuing or serving of process on any of the days above mentioned.

When holiday falls on Sunday, notes, bills, etc., falling due or maturing on holiday.

Continuance of suits in courts.

Approved, February 10, 1877.

CHAPTER XLVI.

HOMESTEADS.

[Revised Statutes, Chap. XLVIII.]

Exemption of homestead from execution or attachment.

1343. SECTION 1. Every householder in the state of Colorado, being the head of a family, shall be entitled to a homestead not exceeding in value the sum of two thousand dollars, exempt from execution and attachment, arising from any debt, contract, or civil obligation entered into or incurred after the first day of February, in the year of our Lord one thousand eight hundred and sixty-eight.

How to be designated of record

1344. SEC. 2. To entitle any person to the benefits of this act, he shall cause the word "homestead" to be entered of record in the margin of his recorded title to the same.

Occupation necessary to exemption.

1345. SEC. 3. Such homesteads shall only be exempt as provided in the first section of this act, while occupied as such by the owner thereof, or his or her family.

Who entitled to homestead of decedent.

1346. SEC. 4. When any person dies seized of a homestead, leaving a widow, or husband, or minor children, such widow, or husband, or minor children, shall be entitled to the homestead; but in case there is neither widow, husband, nor minor children, the homestead shall be liable for the debts of the deceased.

Value, and of what homestead may consist.

1347. SEC. 5. The homestead mentioned in this act may consist of a house and lot or lots, in any town or city, or of a farm consisting of any number of acres, so that the value does not exceed two thousand dollars.

Mortgage of homestead and acknowledgment thereof.

1348. SEC. 6. Nothing in this act shall be construed to prevent the owner and occupier of any homestead from voluntarily mortgaging the same. *Provided*, no such mortgage shall be binding against the wife of any married man, who may be occupying the premises with him, unless she shall freely and voluntarily, separate and apart from her husband, sign and acknowledge the same, and the officer taking such acknowledgment shall fully apprize her of her rights and the effect of signing such mortgage.

Sale of homestead of greater value than two thousand dollars by creditor.

1349. SEC. 7. When any creditor shall be of the opinion that any homestead provided for in this act is of greater value than two thousand dollars, on filing an affidavit of that fact, with the clerk of the district court, such creditor

may proceed against said homestead as in ordinary cases, and if the said homestead shall sell for more than two thousand dollars and costs, the excess shall be applied to the payment of the demand of such creditor; but in all such cases the sum of two thousand dollars, free of charge or expense, shall be paid to the owner of the homestead; and in case the said homestead shall not sell for more than two thousand dollars and costs, the person instituting the proceeding shall pay all costs of such proceeding, and the said proceeding cease and not affect or impair the rights of the owner of the homestead.

Exemption of homestead acquired from proceeds of sale of former homestead.

1350. SEC. 8. That in case of the sale of said homestead, any subsequent homestead acquired by the proceeds thereof shall also be exempt from execution or attachment, nor shall any judgment or other claim against the owner of such homestead be a lien against the same in the hands of a *bona fide* purchaser for a valuable consideration.

CHAPTER XLVII.

IMPRISONMENT FOR DEBT.

[Revised Statutes, Chapter XLII.]

No imprisonment or arrest for debt.

1351. There shall be no imprisonment or arrest for debt in this state, in any case, upon any contract, expressed or implied.

CHAPTER XLVIII.

INJUNCTIONS.

AN ACT REGULATING THE POWER OF GRANTING AND DISSOLVING INJUNCTIONS AND RESTRAINING ORDERS, AND THE MODE OF OBTAINING MANDATORY WRITS OF INJUNCTION, AND THE PRACTICE UNDER EACH, IN CASE OF DISOBEDIENCE, AND TO REPEAL CHAPTER 43 OF THE REVISED STATUTES, AND SECTION 2 OF "AN ACT CONCERNING MINES," APPROVED FEBRUARY 13, 1874, AND THE ACT AMENDATORY THEREOF, ENTITLED "AN ACT TO AMEND AN ACT ENTITLED AN ACT CONCERNING MINES," APPROVED FEBRUARY 13, 1874, AND APPROVED FEBRUARY 11, 1876.

Be it enacted by the General Assembly of the State of Colorado:

1352. SECTION 1. The district court, in term time, and any judge thereof in vacation, shall have power to grant and to dissolve writs of injunction, except as hereinafter

limited. In case of a vacancy in the office of any district judge, or in case of his absence from his district, or in case such judge has an interest in the subject matter of litigation, or if from sickness or any other cause, he is unable to discharge the duties of his office, then the district judge of any other district may grant and dissolve such writs; or upon the happening of either of the events above enumerated, or in case of the absence of the district judge from any county of his district, then a master in chancery of such county, in causes of action arising therein, may grant such writs, except that a master in chancery shall not have power to grant any such writ against the working of any mining claims.

Who may grant or dissolve writs of injunction.

1353. SEC. 2. When any injunction shall be granted to stay a suit or judgment at law, the proceedings shall be had in the county where the judgment was obtained or the suit is pending, or the writ of subpœna may be sent in the first instance into any other county in this state, where the defendant resides. No writ of injunction shall be granted to stay proceedings under a judgment obtained before a justice of the peace, for a sum not exceeding twenty dollars, exclusive of costs.

Injunctions to stay a suit or judgment at law.

1354. SEC. 3. No injunction shall be granted to stay judgment at law for a greater sum than the complainant shall show himself equitably not bound to pay, and so much as shall be sufficient to cover costs. Every injunction, when granted, shall operate as a release of all errors in the proceedings at law that are prayed to be enjoined. No injunction shall be issued in such cases, unless the complainant, or some person in his, her or their behalf, shall have previously executed a bond, with sufficient surety to the defendant, approved by the court, judge or master, or the clerk, where the court, judge or master granting such injunction so orders, and filed with the clerk, in double the sum directed to be enjoined, conditioned for the payment of all money and costs due, or to be due, to the plaintiff in the action of law, and also all such costs and damages as shall be awarded against the complainant in case the injunction shall be dissolved. If the injunction be dissolved, in whole or in part, the complainant shall pay, exclusive of

Injunctions to stay judgment at law; to operate as a release of errors.

Amount and condition of bond for.

Payment of damages by complainant in case of dissolution of writ.

legal interest and costs, such damages as the court shall award, not exceeding ten per cent. on such part as may be released from the injunction; and the clerk shall issue execution for the same, when he issues on such judgment.

Injunctions other than those to stay suit or judgment

1355. SEC. 4. In case of granting a writ of injunction other than those to stay a suit or judgment at law, the court, judge or master in chancery granting the writ, shall make an order fixing the amount of the bond, which shall be in a reasonable sum; and no injunction shall be issued until complainant or complainants, or some one for him, her or them, shall have previously executed a bond with sufficient surety, payable to the defendant or defendants, approved by the court, judge or master in chancery granting the writ, or the clerk of the court out of which the writ is to issue when the order so directs, and filed with the clerk; which bond shall be conditioned to pay all such costs and damages as shall be awarded against the complainant or complainants, in case the injunction shall be modified or dissolved in whole or in part.

Amount and condition of bond for

Notice to be given opposite party, of time and place of making application for.

1356. SEC. 5. Whenever application shall be made for a writ of injunction, the party intending to make such application, except as hereinafter provided, shall give notice to the opposite party of the time and place of making such application prior to making the same; *provided*, that if such application shall be made to the court in term time, in a cause pending in such court, in which the defendant or defendants shall have been served with process ten days prior to the term at which such application shall be made, or if the complainant shall file an affidavit showing that irreparable mischief or injury will result to him if notice be given, or that the case is too urgent to admit of delay incident to giving notice, or where it appears from the bill of complaint that the defendant or defendants may commit the acts concerning which injunctive relief is sought before the motion can be heard, no such notice shall be required, but the court or judge shall proceed to hear the application *ex parte*; *and provided further*, that any writ of injunction issued against the working and mining of a lode or mining claim without notice to the opposite party, shall be void. The notice to be given shall be in proportion to the

In what cases *ex parte* hearing to be had.

urgency of the case. If the party against whom the writ is to run, desires further time to prepare his defense, the court, or judge, may grant such time as may seem proper, not exceeding in any case five days; and may in the mean time issue a temporary injunction until the determination of said application; and the court, or judge, may require complainant or complainants, to give bond during the existence of such temporary injunction, conditioned as in section 4 of this act. No motion to dissolve an injunction shall be heard in vacation when granted upon mining claims after answer filed.

What notice to be given.

Temporary injunction.

Hearing of motion to dissolve in certain cases.

1357. SEC. 6. If any person against whom a writ of injunction or temporary injunction shall be issued, shall, after the service thereof, be guilty of disobedience to, and breach of the injunction or temporary injunction, it shall be lawful for the judge granting the same, or for the judge of the district in which the writ or order issued, or if the same were granted in open court, then for any judge in vacation to issue an attachment against said person or persons for a contempt. Upon his or their being brought before the said judge, unless he or they shall disprove or purge the said contempt, the said judge may in his discretion commit him or them to jail until the sitting of the court in which the said injunction is pending, or take bail for his appearance at the said court at the next term thereof to answer for the said contempt, and to abide the order of the court thereon.

Disobedience of writ; attachment therefor.

1358. SEC. 7. In all causes in which writs of injunction may be issued without notice, defendant or defendants may at any time after filing a demurrer, plea or answer to the bill of complaint, and whether in term time or in vacation, move the court, or if application shall be made in vacation, the judge thereof to dissolve the injunction. If the defendant or defendants shall have filed a plea or answer to the bill, it shall be lawful for the parties respectively, upon the hearing of such motion, to introduce testimony in support of the bill and plea or answer, and the court or judge shall decide such motion upon the weight of testimony without being bound to regard the plea or answer as absolutely true. If at or before the time designated for the

When motion to dissolve injunction may be heard. Testimony may be introduced.

hearing of such motion, either party or some credible person for him shall make and file in the court an affidavit showing that such party hath a witness or witnesses by whom he can disprove the bill, plea or answer (as the case may be) or some material part thereof, giving the name or names of such witness or witnesses, his or their place of abode, and the particular facts which the party will prove by him or them, and that such party has had no opportunity to procure the testimony of such witness since the coming in of the plea or answer, the court or judge, if satisfied that the testimony of such witness or witnesses will be material upon the hearing of such motion, shall grant a continuance of the hearing for such reasonable time as may be necessary, to enable the party to procure the testimony of such witnesses. Affidavits filed with the bill or answer and the deposition of witnesses in writing, taken and certified as in other cases in chancery proceedings, may be heard and shall be considered by the court or judge upon the hearing of such motion, and depositions taken for the purpose of being read at such hearing may be read on final hearing of the cause in which they have been taken. *Provided*, that in any cause where any injunction shall have been awarded after notice, as provided by section 5 of this act, no motion for the dissolution of such injunction shall be heard or made in vacation.

Granting of continuances for the purpose of enabling parties to procure testimony.

Consideration of affidavits and depositions.

When motions to dissolve not to be heard in vacation

1359. SEC. 8. In all cases in which an application to dissolve an injunction shall be made to the judge of any district court in vacation, as provided in this act, it shall be lawful for such judge to continue such injunction or to dissolve the same in the same manner, and with like effect as if application was made to the court in term time.

Continuance or dissolution of injunctions by judge in vacation.

1360. SEC. 9. It shall not be necessary to the granting of an injunction, that the complainant's bill be first filed in the court out of which such writ is prayed; but the order of the judge or any court to whom any bill is presented praying such injunction, may direct the same to issue, upon the filing of the complainant's bill with the bond required by the third or fifth sections (as the case may be.)

Not necessary to granting of writ that bill should be first filed

1361. SEC. 10. The said district court of the state, or any judge thereof sitting in chancery, shall have, in addi-

tion to the power already possessed, power to issue writs of injunction, for affirmative relief, having the force and effect of a writ of restitution, restoring any person or persons to the possession of any mining property, or premises from which he or they may have been ousted by fraud, force or violence, or from which he or they are kept out of possession by threats, or by words, or actions, which have a natural tendency to excite fear or apprehension of danger, or whenever such possession was taken from him or them by entry of the adverse party on Sunday, or a legal holiday, or while the party in possession was temporarily absent therefrom. The granting of such writ to extend only to the right of possession under the facts of the case in respect to the manner in which the possession was obtained; leaving the parties to their legal rights on all other questions as though no such writ had issued. *Provided*, that no such writ shall issue except upon notice in writing to the adverse party of at least five days, of the time and place of making such application, if made in vacation, and if made in term time, not before defendant or defendants have been duly served with process, and required to appear and answer by virtue of such service. And if the defendant or defendants shall file an answer to the bill upon which such application is founded, denying under oath the material averments in said bill contained, the said court or judge thereof shall cause the said application to be referred to a master in chancery, to take proofs in support of said bill and answer, and shall direct the said master to report the proofs to the said court or judge within a reasonable time, allowing to the complainant and defendant a reasonable time in which to take proofs; and the time so allowed by said court or judge for the purpose of taking testimony, shall be equally divided between said complainant and defendant; and it shall be the duty of the complainant or complainants, to take his, her or their testimony first, and the defendant or defendants shall proceed to take his, her or their proof within the last half of said time so allowed, and the said court or judge shall adjourn the hearing of the said application until some day within a reasonable time after the time of taking and completing said proofs, and

Writs of injunction for affirmative relief, having the force and effect of a writ of restitution.

Writ not to issue except on notice in writing, if in vacation, or service of notice if in term time.

Reference to master in chancery.

at such time, upon the hearing of said master's report, shall grant or refuse said writ, as the pleadings and evidence in said cause or proceedings may warrant or require: *And provided further*, that no so such writ shall issue in favor of any person or persons, to restore to such person or persons possession of any mining property, if the said person or persons shall have obtained or procured possession of said property by violence, or by fraud, or by taking possession of the same while the adverse party in possession was temporarily absent therefrom: *And provided further*, that appeal, as in other cases in chancery, shall be allowed from any final order or decree granting an injunction under the provisions of this section; but such appeal shall not have the effect to suspend the operation of said writ after an order or decree is made by the court or judge granting the same, nor to continue one in force after an order or decree is made dissolving any injunction pending the appeal. When application is made for such an injunction for affirmative relief as contemplated in this section, the court or judge shall immediately, on the filing of the complainant's bill of complaint, issue a temporary injunction, as provided for in section 5 of this act.

In what cases not to issue for restoration of mining property.

Appeals, how to affect operation of writ.

Temporary injunction to issue on filing of bill

1362. SEC. 11. No writ of injunction for affirmative relief, having the force and effect of a writ of restitution, shall be valid or have any force whatsoever, if issued without notice and without complying with the provisions and conditions of the preceding section.

Writ for affirmation relief, etc., not valid if issued without notice.

1363. SEC. 12. That in suing on any bond provided for in this act, it shall not be necessary to bring suit in the first instance against the principal on such bond to ascertain the amount of damages sustained or awarded by the court, but the principal and surety may be sued together, and at the trial damages may be assessed and awarded against the principal and surety in the action.

Suit on bonds for injunction.

1364. SEC. 13. That chapter 43 of the revised statutes, entitled "injunctions," be and the same is hereby repealed. Also, section 2 of an act concerning mines, approved February 13, 1874. Also, an act to amend an act entitled an act concerning mines, approved February 13, 1874, approved February 11, 1876, be and the same are hereby

Repeal.

repealed, and all other acts repugnant to or inconsistent with the provisions of this act, be and the same are hereby repealed. But the repeal of said statutes shall in no wise abate or affect any writ issued under any of said statutes or any action or proceeding instituted or pending under any of the provisions of the statutes so repealed, or deny, abridge, divest or impair any right accrued or arising while the same remained in force, or to divest or impair any remedy given thereby to enforce any order, judgment or decree of the court under any such statute so repealed, or to punish any person or persons for the violation of any such writ issued under or pending at the time of the repeal of said statutes, but as to all rights and titles accrued, and all acts done and completed while same remained force, in all such acts and parts of acts heretofore repealed shall be construed to be and remain in force, notwithstanding such repeal.

Not to abate or affect any writ issued under former statutes, nor to abridge, impair etc., accrued rights or enforcement of a decree.

1365. SEC. 14. Inasmuch as there are grave doubts whether any law now exists whereby writs of injunction can be granted by any of the judges in vacation, and whereas it is necessary that such power shall be vested in them, in the opinion of the general assembly this is such a case as is contemplated in section 19 of article 5 of the constitution; therefore this act shall take effect and be in force from and after its passage.

Emergency

Approved, March 1, 1877.

CHAPTER XLIX.

INTEREST.

AN ACT CONCERNING INTEREST.

Be it enacted by the General Assembly of the State of Colorado:

1366. SECTION 1. The legal rate of interest on the forbearance or loan of any money, when there is no agreement between the parties, as specified in section three of this act, shall be at the rate of ten per centum per annum.

Legal rate of interest.

1367. SEC. 2. Creditors shall be allowed to receive interest, when there is no agreement as to the rate thereof,

Upon what creditors may receive legal rate of interest in case of no agreement.

at the rate of ten per cent. per annum for all moneys after they become due, on any bond, bill, promissory note or other instrument of writing, or any judgment recovered before any court or magistrate authorized to enter up the same within this state, from the day of entering up said judgment until satisfaction of said judgment be made; likewise on money lent, on money due on the settlement of account from the date of the last just entry that may have been made in account, on money received to the use of another and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay.

Higher rate may be stipulated in writing.

1368. SEC. 3. The parties to any bond, bill, promissory note or other instrument of writing, may stipulate therein for the payment of a greater or higher rate of interest than ten per cent. per annum, and any such stipulation contained in any such instrument of writing, may be enforced in any court of law or equity in the state.

Interest on county orders, and state and county warrants.

1369. SEC. 4. County orders, state and county warrants, and other like evidences or certificates of indebtedness, shall bear interest at the rate of ten per cent. per annum from the date of the presentation thereof for payment, at the treasury where the same may be payable, until there is money in the treasury for the payment thereof, except as in special cases otherwise provided by law; and every county treasurer to whom any such order or warrant is presented for payment, shall indorse thereon the rate of interest said order or warrant will draw, and the date of such presentation, and subscribe such indorsement with his official signature.

To be indorsed on order or warrant.

Repeal.

1370. SEC. 5. That chapter 44 of the revised statutes be and the same is hereby repealed.

Emergency.

1371. SEC. 6. Inasmuch as it believed that the state warrants now issued and to be issued within the next ninety days will be greatly enhanced in value if the provisions of a portion of this act take effect without delay, and this general assembly is of the opinion that this act should take effect without delay, therefore this act shall take effect and be in force immediately.

Approved, February 2, 1877.

CHAPTER L.

IRRIGATION.

[Revised Statutes, Chapter XLV.]

Use of the waters of stream, creek or river.

1372. SECTION 1. All persons who claim, own or hold a possessory right or title to any land or parcel of land within the boundary of the state of Colorado, as defined in the constitution of said state, when those claims are on the bank, margin or neighborhood of any stream of water, creek or river, shall be entitled to the use of the water of said stream, creek or river for the purposes of irrigation, and making said claims available to the full extent of the soil, for agricultural purposes.

Right of way through other lands.

1373. SEC. 2. When any person owning claims in such locality has not sufficient length of area exposed to said stream to obtain a sufficient fall of water to irrigate his land, or that his farm, or land used by him for agricultural purposes, is too far removed from said stream, and that he has no water facilities on those lands, he shall be entitled to a right of way through the farms or tracts of lands which lie between him and said stream, or the farms or tracts of land which lie above and below him on said stream, for the purposes hereinbefore stated.

Right of way limited.

1374. SEC. 3. Such right of way shall extend only to a ditch, dyke or cutting, sufficient for the purpose required.

Appointment of commissioners to apportion water in case of insufficiency of supply.

1375. SEC. 4. In case the volume of water in said stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, then the county judge of the county shall appoint three commissioners as hereinafter provided, whose duty it shall be to apportion, in a just and equitable proportion, a certain amount of said water upon certain or alternate weekly days to different localities, as they may in their judgment think best for the interest of all parties concerned, and with due regard to the legal rights of all; *provided*, that this section shall not apply to persons occupying land on what is known as Hardscrabble creek, a tributary of the Arkansas river, but upon said stream, the owners of the ranch known as the Hardscrabble ranch, their successors and assigns, shall have the exclusive right to all the water in

said Hardscrabble creek, down said stream to the north line of said Hardscrabble ranch; *provided*, there is not any more water in said stream, at the above named line, than would be required to irrigate one hundred and sixty acres of land.

Condemnation of lands for right of way.

1376. SEC. 5. Upon the refusal of the owners of tracts of land or lands through which said ditch is proposed to run, to allow of its passage through their property, the person or persons desiring to open such ditch may proceed to condemn and take the right of way therefor, under the provisions of chapter thirty-one of these laws concerning eminent domain.

Machinery for raising water.

1377. SEC. 6. All persons on the margin, brink, neighborhood or precinct of any stream of water, shall have the right and power to place upon the bank of said stream a wheel, or other machine for the purpose of raising water to the level required for the purpose of irrigation, and the right of way shall not be refused by the owner of any tract of land upon which it is reqnired, subject of course to the like regulations, as required for ditches, and laid down in sections hereinbefore enumerated.

Embankments of ditches.

1378. SEC. 7. The owner or owners of any ditch for irrigation or other purposes, shall carefully maintain the embankments thereof, so that the waters of such ditch may not flood or damage the premises of others.

Prior rights not to be impaired.

1379. SEC. 8. Nothing in this chapter contained shall be so construed as to impair the prior vested rights of any mill or ditch owner, or other person, to use the waters of any such water course.

Notice to be given of appointment of commissioners.

1380. SEC. 9. The commissioners provided for by section four of this chapter, shall not be appointed until at least six days' previous notice shall have been given to parties in interest, by posting notices of the time and place when and where such appointment will be made, in at least five public places within the region watered by the said stream.

Bridges across ditches.

1381. SEC. 10. Any ditch company constructing a ditch, or any individual having ditches for irrigation, or for other purposes, wherever the same be taken across any public highway, or public traveled road, shall put a good

substantial bridge, not less than fourteen feet in breadth, over such watercourse where it crosses said road.

Duty of supervisors in case of failure to construct bridge.

1382. SEC. 11. When any such ditch or watercourse shall be constructed across any public traveled road, and not bridged within three days thereafter, it shall be the duty of the supervisor of the road district to put a bridge over said ditch or watercourse, of the dimentions specified in section ten of this chapter, and call on the owner or owners of the ditch to pay the expenses of constructing such bridge.

Proceedings in case of refusal of owners of ditch to pay expense of construction of bridge.

1383. SEC. 12. If the owner or owners of such ditch refuse to pay the bill of expenses so presented, the supervisor may go before any justice of the peace in the township or precinct, and make oath to the correctness of the bill, and that the owner or owners of the ditch refuse payment, and thereupon such justice of the peace shall issue a summons against such owner or owners, requiring him or them to appear and answer to the complaint of such supervisor, in an action of debt for the amount sworn to be due, such summons to be made returnable and served, and proceedings to be had thereon as in other cases; and in case judgment shall be given against such owner or owners, the justice shall assess, in addition to the amount sworn to be due as aforesaid, the sum of ten dollars, as damages arising from the delay of such owner or owners, such judgment to be collected as in other cases, and to be a fund in the hands of the supervisor of roads, for the repairs of roads in such precinct or district.

AN ACT TO EXEMPT IRRIGATING DITCHES FROM TAXATION.

[Session Laws, 1872.]

Exemption from taxation.

1384. SECTION 1. That all ditches used for the purpose of irrigation, and that only where the water is not sold for the purpose of deriving a revenue therefrom, be and the same are hereby declared free from all taxation, whether for state, county, or municipal purposes.

AN ACT TO PREVENT THE WASTE OF WATER DURING THE IRRIGATING SEASON.

[Session Laws, 1876.]

Owners of ditch to prevent waste of water.

1385. SECTION 1. The owner of any irrigating or mill ditch shall carefully maintain and keep the embankment thereof in good repair, and prevent the water from wasting.

Useless discharge and running away of water to be prevented

1386. SEC. 2. During the summer season, it shall not be lawful for any person or persons to run through his or their irrigating ditch any greater quantity of water than is absolutely necessary for irrigating his or their said land, and for domestic and stock purposes; it being the intent and meaning of this section to prevent the wasting and useless discharge and running away of water.

Penalty for violation of provisions of this act.

1387. SEC. 3. Any person who shall wilfully violate any of the provisions of this act shall, on conviction thereof before any court having competent jurisdiction, be fined in a sum of not less than one hundred (100) dollars. Suits for penalties under this act shall be brought in the name of the people of the state of Colorado.

CHAPTER LI.

JAILS.

AN ACT TO REPEAL THE ACTS CONCERNING JAILS, AND TO ENACT OTHER LAWS IN LIEU THEREOF.

Be it enacted by the General Assembly of the State of Colorado:

Establishment and maintenance of county jails.

1388. SECTION 1. There shall be established and maintained in each county in this state, at the expense of the county, a county jail for the detention, safe keeping and confinement of persons and prisoners lawfully committed. *Provided*, that nothing in this act contained, shall be construed to compel the erection of jails in counties having a population of less than two thousand, or when the county owns a jail erected in any other place in the county.

Keeper of county jails; in what manner to be kept

1389. SEC. 2. The sheriff of the county, in person or by deputy for that purpose appointed, shall be the keeper of the county jail. He shall be responsible for the manner in which the same is kept; he shall see that the same is

kept clean, safe and wholesome; and the expenses of keeping the jail in good order and repair, of lighting and warming that part thereof wherein prisoners are confined, and the office in the jail, shall be paid by the county wherein the jail is situated. But nothing herein shall authorize the lighting or warming that part of the jail occupied by the keeper thereof as his dwelling house.

Receipt and keeping of prisoners; compensation for.

1390. SEC. 3. The keepers of the several county jails in this state, shall receive and safely keep every person duly committed to such jail for safe keeping, examination, or trial, or duly sentenced to imprisonment in such jail upon conviction for any contempt or misconduct, or for any criminal offense, and shall not without lawful authority let out of such jail, on bail or otherwise, any such person. And it shall be the duty of every such keeper to supply proper food and drink for the prisoners committed to his custody in such jail at his own expense; and the board of county commissioners of the county where such jail is situated, shall allow the keeper of the jail for dieting prisoners, such reasonable compensation per day as shall be just.

Distinction between prisoners committed on civil or criminal process.

1391. SEC. 4. Persons committed on criminal process and detained for trial, and persons committed for contempt or upon civil process, shall be kept in rooms separate and distinct from those in which prisoners convicted and under sentence shall be confined; *provided*, that this section shall not apply to any county whose jail shall not have sufficient room for such separate confinement.

Separation of males and females.

1392. SEC. 5. Male and female prisoners (except husband and wife) shall not be put or kept in the same room.

Duplicate copy of process upon which prisoner committed, sufficient authority for detention.

1393. SEC. 6. When a prisoner is committed to any jail by virtue of any process which the sheriff is required to return to the court whence it issued, it shall be the duty of the court, clerk or officer issuing such process, to issue the same in duplicate, and the sheriff shall keep one copy of the same, together with a copy of his return thereto, endorsed thereon, which duplicate copy of such process retained by the sheriff shall be sufficient authority, *prima facie*, to retain such prisoner in custody.

1394. SEC. 7. All instruments of every kind, or attested

In what manner such processes to be preserved.

copies thereof duly certified, by which any person is committed to, or liberated from the county jail, shall be regularly endorsed and filed, and kept in a suitable box in the jail, by the sheriff, or by his deputy acting as jailer, and such box together with its contents shall be delivered to his successor in office.

Daily record of commitments and discharges.

1395. SEC. 8. It shall be the duty of the keeper of each county jail to keep in a book provided by the county for that purpose, a daily record of the commitments and discharges of all persons delivered to his custody, which record shall exhibit the date of entrance, name, offense, term of sentence, fine, age, sex, country, how and by whom committed, when and by whom discharged, which record shall be open to the inspection of the public at all reasonable hours, and shall be delivered by the sheriff to his successor in office.

Commitment and re-delivery of prisoners committed to jails of other counties; payment for keeping of such prisoners

1396. SEC. 9. When there is no sufficient jail in any county wherein any criminal offense shall have been committed, any justice of the peace, county or district judge, upon application of the sheriff, may order any person charged with any criminal offense, and ordered to be committed to jail, to be sent to the jail of the county nearest having a sufficient jail; and the sheriff of such nearest county shall, on exhibit of the order of such judge, receive and keep in safe custody in the jail of his county the person or persons ordered to be committed as aforesaid. And such sheriff, upon the order of the district court or judge thereof, shall re-deliver such person or persons when demanded, and all the expenses of keeping such person or persons shall be paid by the county from which such person or persons was or were sent, and the board of county commissioners of the county from which any prisoner or prisoners shall be sent, shall at the next regular meeting after receiving the bill for the expenses of such maintenance, safe keeping and custody, audit and allow the claim for such maintenance, safe keeping and custody, and pay the same in money to the treasurer of the county in which such jail is situated, for the use of such county.

1397. SEC. 10. Any county jail may be used for the detention and safe keeping of any fugitive from justice from

another state or territory, and in this case the county shall be entitled to compensation at the rate prescribed by the board of county commissioners; *provided*, that the rate so charged shall be subject to the approval of the district judge, for the maintenance and safe keeping of such fugitive in custody, to be paid by the officer demanding the custody of such fugitive, to the sheriff of the county, and by him paid over to the treasurer of the county for the use of the county.

Payment for safe keeping and detention of fugitives from justice of other states, etc.

1398. SEC. 11. Juvenile prisoners shall be treated with humanity, and in such manner as will promote their reformation; they shall be kept in apartments separate from those containing more experienced and hardened criminals; the visits of parents, guardians and friends, who desire to exert a moral influence over them, shall at all reasonable hours be permitted.

Juvenile prisoners.

1399. SEC. 12. Whenever the safe-keeping and detention of persons lawfully committed to any jail in this state shall, in the opinion of the board of county commissioners, require the employment of one or more guards, the said board of county commissioners of the county where such jail is situated, shall authorize the sheriff of such county to employ such guard or guards at the expense of the county, at such reasonable compensation as such board shall allow, which guard or guards shall be under the command of the keeper of the jail; *provided*, that such guard or guards shall be discharged from service whenever in the judgment of the board of county commissioners their services are not required.

Employment of guards.

1400. SEC. 13. It shall be the duty of the keeper of each county jail to receive into the jail every person duly committed thereto for any offense against the United States, by any court or officer of the United States, and to confine every such perssn in the jail until he shall be duly discharged, the United States paying all the expenses of the confinement, safe-keeping and custody, of such person, including the keeper's fees, at the rate established by the board of county commissioners of the county where such jail is situated.

Payment for keeping of United States prisoners.

1401. SEC. 14. It shall be the duty of the board of

Establishing rate of charges by county commissioners.

county commissioners of each county having a jail in this state, to establish a rate of charges to be paid for the confinement, safe-keeping and maintenance of prisoners sent from other counties in this state, fugitives from justice, and persons committed by authority of the United States, which rate of charges may be altered, changed or modified by the board of county commissioners of such county, whenever in their judgment it shall seem best to do so; *provided*, that the rate so charged shall be subject to the approval of the judge of the district court of such county.

Account of moneys received by keeper of jail for keeping of prisoners from other counties, etc.

1402. SEC. 15. It shall be the duty of the keeper of every jail within this state, to keep an accurate account of all moneys received by him on account of the confinement, safe-keeping and maintenance of persons committed from other counties, fugitives from justice and prisoners committed to the jail by authority of the United States, and to report the same quarterly to the board of county commissioners of the county wherein such jail is situated, and to pay over to the treasurer of such county quarter-yearly all such moneys for the use of such county.

Examination of jail by county commissioners.

1403. SEC. 16. It shall be the duty of the county commissioners to make personal examination of the jail of their county, its sufficiency and the management thereof, during each session of the board and to correct all irregularities and improprieties therein found.

Pursuit and re-capture of escaped prisoners; when to be at expense of sheriff.

1404. SEC. 17. In case of escape of any person lawfully committed to any jail of any county in this state, it shall be the duty of the sheriff of the county where such jail is situated, to pursue and re-capture such escaped person or persons at his own expense, and nothing herein contained shall be construed to make the county wherein such jail is situated, liable for or on account of the escape of any prisoner committed to such jail from another county, or by authority of the United States, or for the escape of any fugitive from justice; *provided*, that in case of any escape without any fault or negligence on the part of the keeper of the jail, or the guards under his command, the county commissioners of the county where such jail is situated may audit and allow to the sheriff the necessary expenses incurred in such re-capture, if they deem it best.

1405. SEC. 18. Chapter forty-six of the revised statutes of the territory of Colorado, is hereby repealed. Repeal

Approved, March 9, 1877.

CHAPTER LII.

JOINT RIGHTS AND OBLIGATIONS.

[Revised Statutes, Chapter LXVII]

1406. SECTION 1. If partition be not made between joint-tenants, the parts of those who die first shall not accrue to the survivor or survivors, but descend or pass by devise, and shall be subject to debts, charges, etc., or transmissible to executors or administrators, and be considered to every intent and purpose in the same view as if such deceased joint-tenants had been tenants in common. Rights of joint tenants in case of death, and no partition having been made

1407. SEC. 2. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint-tenancy, tenancy in common, or coparcenary, the party aggrieved shall have his action of trespass or trover, for the injury, in the same manner as he would have if such joint-tenancy, tenancy in common or coparcenary did not exist. Action for injury to property by one joint tenant against another.

1408. SEC. 3. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants. Joint obligations and covenants; how held.

CHAPTER LIII.

JUDGMENTS AND EXECUTIONS.

[Revised Statutes, Chapter XLVIII.]

1409. SECTION 1. All and singular the goods and chattels, lands, tenements and real estate of every person against whom any judgment shall be obtained, in any court of record, either at law or in equity, for any debt, damages, costs or any other sum of money, shall be liable to be sold on execution, to be issued upon such judgment, and the What property liable to sale on execution.

said judgment shall be a lien on the real property of the judgment debtor not exempt from execution, in the county, owned by him at the time or which he may afterwards acquire, until said lien expires. The lien shall continue for six years from the entry of judgment unless the judgment be previously satisfied. *Provided*, that execution be issued at any time within one year, on such judgment; and from and after the said six years the same shall cease to be a lien on any real estate, as against *bona fide* purchasers or subsequent encumbrancer by mortgage, judgment or otherwise; *provided*, that in case the party in whose favor any such judgment shall have been entered shall be restrained by injunction out of chancery, or order of any judge or court, either from issuing execution or selling thereon, the time which he shall be so restrained shall not be deemed or considered as any part of the said six years. The term real estate in this section, shall be construed to include all interest of the defendant, or any person to his use, held or claimed by virtue of any deed, bond, covenant or otherwise, for a conveyance or as mortgagor of lands, in fee for life, or for years.

Lien of judgment upon real estate. (Amendment 1877, Code)

Time of restraint by injunction not considered part of term of judgment lien.

1410. SEC. 2. When any judgment shall have become a lien, as aforesaid, and the defendant happen to die before execution shall have been issued thereon, the remedy of the person in whose favor the said judgment shall have been rendered shall not be delayed or suspended by reason of the non-age of any heir or heirs of such defendant; but no execution shall issue upon such judgment until the expiration of one year after the death of such defendant, nor shall any law of this state which gives no preference to the claims of a creditor of a deceased debtor, be so construed as to impair or affect the lien of any judgment as aforesaid.

Issue of execution after death of judgment debtor; lien of judgment not affected by death of defendant.

1411. SEC. 3. The legal holder or holders, by record, of any certificate of purchase of lands, of the United States, shall be deemed to be within the true intent and meaning of this chapter.

Holders of certificates of purchase of lands from United States, within this chapter.

1412. SEC. 4. In all executions, to be issued upon judgments recovered upon contracts expressed or implied, it shall be lawful to direct the collection of interest on the said judgment from the time of recovering the same until paid, at the rate of ten per cent. per annum.

Rate of interest recoverable on judgment.

1413. SEC. 5. It shall be lawful for the party in whose favor any judgment as aforesaid may be obtained, to have execution, in the usual form, directed to any county in this state, against the goods, chattels, lands and tenements of such party defendant, or upon his body, when the same is authorized by law. Issue of execution to any county.

1414. SEC. 6. All executions shall be made returnable ninety days after date, and no writ of execution shall bind the property of the goods and chattels of any person against whom such writ shall be issued, until such writ shall be delivered to the sheriff, or other officer, to be executed; and for the better manifestation of the said time, the sheriff or other officer shall, on the receipt of every such writ, indorse upon the back thereof the hour, day of the month, and year, when he received the same. When execution returnable; personal property not bound thereby until delivery of writ to sheriff.

1415. SEC. 7. The plaintiff in execution, may elect on what property he will have the same levied, except the land on which the defendant resides, which shall be last taken in execution, excepting and reserving, however, to the defendant in execution such property as is, or may be, by law exempted from execution. Election of property on which execution levied, by plaintiff.

1416. SEC. 8. When any property, real or personal, shall be taken in execution, if such property is susceptible to division, it shall be sold in such quantities as may be necessary to satisfy such execution and costs. Sale of property susceptible of division.

1417. SEC. 9. No lands or tenements shall be sold, by virtue of any execution aforesaid, unless such sale be at public vendue, and between the hours of nine in the morning and the setting of the sun the same day; nor unless the time and place of holding such sale shall have been previously advertised, for the space of twenty days, by publishing notices of the time and place thereof in some daily or weekly newspaper printed and published in the county where such lands and tenements are situate; or if there be no such newspaper printed in the county, by posting such notices, printed or written, or partly printed and partly written, in three of the most public places in the county where the lands may be situated, specifying the names of the plaintiff and defendant in the execution; and in all such notices the lands or tenements to be sold shall Sale of lands and tenements on execution; how to be made.

be described, with reasonable certainty, by setting forth their number, or by some other appropriate description; and if any sheriff or other officer shall sell any lands or tenements, by virtue of any such execution, otherwise than in the manner aforesaid, or without such previous notice, the sheriff or other officer so offending, shall, for every offense, forfeit and pay the sum of fifty dollars, to be recovered, with costs of suit, in any court of record in this state, by the person whose lands may be advertised and sold. *Provided, however*, that no such offense, nor any irregularity on the part of the sheriff or other officer having the execution, shall be deemed to affect the validity of any sale made under it, unless it shall be made to appear that the purchaser had notice of such irregularity.

Certificate of purchase of premises sold on execution.

1418 SEC. 10. Whenever any lands or tenements shall be sold, by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing a deed of the premises sold, to give to the purchaser or purchasers of such lands or tenements, a certificate in writing, describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid and the time when the purchaser will be entitled to a deed for such lands, or tenements, unless the same shall be redeemed, as is provided in this chapter; and such sheriff or other officer shall, within ten days from such sale, file in the office of the recorder of the county a duplicate of such certificate, signed by him; and such certificate, or a certified copy thereof, shall be taken and deemd evidence of the facts therein contained.

Redemption of lands and tenements sold on execution, by judgment defendant

1419. SEC. 11. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold by virtue of any execution, within six months from such sale, to redeem such lands or tenements, by paying to the purchaser thereof, his executors, administrators, or assigns, or the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid if purchased by the plaintiff in the execution, together with interest thereon at the rate of ten per cent. from the time of such sale; and

on such sum being paid as aforesaid, the said sale and the certificate thereupon granted shall be null and void.

Redemption by judgment creditor.

1420. SEC. 12. After the expiration of six months, and at any time before the expiration of nine months from the sale of any lands or tenements under the provisions of the preceding sections hereof, it shall be lawful for any judgment creditor to redeem the same in the manner following: such judgment creditor shall sue out an execution upon his judgment, and place the same in the hands of the proper officer to execute the same, and thereupon the said officer shall indorse upon the back of said execution a levy upon the land or tenements which said judgment creditor may wish to redeem; and said judgment creditor shall pay to said officer in whose hands he shall have placed his execution, as aforesaid, the amount of money for which said premises shall have been sold, with ten per cent. per annum interest thereon from the date of such sale, for the use of the purchaser thereof, his executors, administrators, or assigns, upon payment of which said officer shall file in the recorder's office of the county in which said lands are situated, a certificate of the redemption thereof, by said judgment creditor, under such execution, and shall advertise and offer the same for sale, under and by virtue of said execution, in the same manner as lands are required to be advertised and exposed to sale on execution in other cases.

Proceedings after redemption by judgment creditor.

1421. SEC. 13. Any judgment creditor, having so redeemed such lands, shall be considered as having bid at such sale the amount of said redemption money, so paid by him, and interest thereon from the date of such redemption to the day of sale; and if no bid greater than said amount shall be offered, the lands shall be struck off and sold to such judgment creditor or creditors, and a deed thereof shall forthwith be executed by such officer to such creditor or creditors, and no other redemption shall be allowed; but if another and higher bid shall be made therefor, and the said lands sold for more than the amount of said redemption money and interest, as last aforesaid, the excess, over and above the amount of the same, shall be applied as a credit on the execution under which the redemption shall have been made, and a certificate of

purchase shall be executed to the new purchaser, in the manner hereinbefore prescribed, for a deed of said land so sold, within sixty days from the date of such sale, unless the same shall be redeemed in the meantime, in the manner herein prescribed, by some other judgment creditor; and if such lands shall be redeemed from said second purchaser, the same shall be done in the same manner, and upon the same terms, and the officer shall proceed in the same mode to offer the said lands for sale as hereinbefore required in the case of the first redemption; and such lands may be successively redeemed, within every period of sixty days, as long as there shall be a judgment creditor disposed to redeem the same, on the terms, and in the manner aforesaid; and after the lapse of any period of sixty days without redemption, it shall be the duty of the officer who last sold such lands on the execution under which the same shall have been last redeemed, or his successor in office, to execute a deed for the lands so sold, to the last purchaser, in like manner as other deeds for lands sold on execution are made.

Redemption to be made in same parcels in which land were sold.

1422. SEC. 14. Any judgment creditor or creditors may redeem the whole, or any part or portion, of the lands or tenements previously sold upon execution: *Provided*, such redemption shall be made in the like distinct quantities or parcels in which the same were sold.

Commissions allowed officer selling premises.

1423. SEC. 15. No commission upon the amount of the redemption money paid, in any case, shall be allowed to the officer receiving the same, but the usual commission shall be allowed the officer selling said premises, on the excess made over and above the amount of said redemption money and interest. The duplicate copy of the certificate of purchase required in the tenth section hereof, shall be filed in the office of the recorder of the county in which the lands so sold under execution are situated.

Certificate of purchase assignable.

1424. SEC. 16. Every certificate which shall be given by any officer to any purchaser, under the provisions of this chapter, shall be assignable by indorsement thereon, under the hand of such purchaser or purchasers, his, her, or their heirs, executors, administrators or assigns; and every person to whom the same shall be so assigned, shall

be entitled to the same benefits therefrom, in every respect, that the person therein named would have been, if the same had not been assigned; and in case the lands mentioned in such certificate, shall not be redeemed in pursuance of law, shall be entitled to a deed thereof.

1425. SEC. 17. The deed to be executed by the officer to the purchaser, under the provisions of this chapter, shall contain a statement of the judgment upon which the lands therein described were sold, and of the date of the execution, and may be in the following form: Form of deed for lands sold on execution.

WHEREAS, A. B. did, at the ——— term of the district court for the county of ——— (as the case may be,) recover a judgment against C. D., for the sum of —— dollars and —— cents and costs, of suit; upon which judgment an execution was issued, dated on the —— day of ——, A. D. 18—, directed to ——— to execute; and by virtue of said execution, the said ——— levied upon the lands hereinafter described, and the same were struck off and sold to ———, he being the highest and best bidder therefor, and the time and place of sale thereof having been duly advertised according to law:

Now, therefore, know all, by this deed, that I, ———, of the said county of ——, in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said ———, his heirs and assigns, the following described tract or tracts of land (describe the lands,) to have and hold the said described premises, with all the appurtenances thereunto belonging to the said ———, his heirs and assigns, forever.

Witness my hand and seal, this —— day of ——, A. D. 18—.

——————— [L. S.]

1426. SEC. 18. If the purchaser shall have assigned his certificate of purchase, then there may be inserted after the word "law," in the foregoing form, in substance as follows: "and the said ———, having duly assigned his certificate of purchase to" (as the case may be.) Form of deed in case of assignment of certificate.

1427. SEC. 19. Any deed so executed shall be evidence

Extent of title conveyed by such deed.

that the provisions of the law in relation to sales of land upon execution were complied with, until the contrary shall be shown, and such deed shall be considered as conveying to the grantee therein named, all the title, estate, and interest of the defendant or defendants, in the execution therein named, in and to the lands thereby conveyed, of whatsoever nature the same may be, but which deed shall not be construed to contain any covenant upon the part of the officer executing the same.

Redemption of lands sold under decree for foreclosure of mortgage.

1428. SEC. 20. In all cases where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors or administrators, to redeem the same in the manner prescribed in this chapter for the redemption of lands sold by virtue of executions issued upon judgments at common law; and judgment creditors may redeem lands sold under any such decree in the same manner as is prescribed for the redemption of lands in like manner sold upon executions issued upon judgments at common law.

Certificate of redemption.

1429. SEC. 21. In all cases of redemption of lands from sale, had under any attachment, judgment, order or decree, or proceeding thereunder, it shall be the duty of the purchaser, sheriff, master in chancery, or other officer or person, from whom said redemption takes place, to make out an instrument in writing, under his hand and seal, evidencing said redemption, which shall be recorded in the recorder's office of the proper county, in manner as other writings, affecting the title to real estate, are filed and recorded; and which recording shall be paid for by the party redeeming.

Sale of personal property on execution; notice to be given.

1430. SEC. 22. No goods or chattels shall be sold by virtue of any execution, unless previous notice of such sale shall have been given, for at least ten days successively, in the same manner as required in the sale of real estate upon execution.

Forthcoming bond in case of retention of personal property by defendant.

1431. SEC. 23. Whenever a sheriff or other officer shall have levied an execution, issued out of any court of record, upon the personal property of a defendant, or shall be about to make such levy, and the defendant be desirous of retain-

ing the same in his possession, such sheriff shall take a bond from such defendant, with security, that the property shall be forthcoming or delivered at such time and place as shall be named in the condition, and that the same shall not be disposed of nor injured; and a bond so taken, shall not be considered void, as taken by color of office.

Proceedings on failure of condition of forthcoming bond.

1432. SEC. 24. Where bonds shall be taken by a sheriff, for the forthcoming and delivery of property, and the defendant or his security shall not return the property named in the said bond conformably to the condition thereof, the officer having such execution may proceed to execute the same in the same manner as if no levy had been made; and in case the defendant's property, or a sufficiency thereof, cannot be found, the officer may proceed to levy on so much of the property of the security in the delivery bond as will make the amount called for in such bond, and the property which may be so taken may be sold, by giving notice thereof, as prescribed in section 23 of this chapter, and no future delivery bond shall be allowed.

Exemption of wearing apparel.

1433. SEC. 25. The necessary wearing apparel of every person shall be exempt from execution, writ of attachment, and distress for rent.

What property exempt from levy and sale upon execution or attachment, or distress for rent.

1434. SEC. 26. The following property, when owned by any person being the head of a family and residing with the same, shall be exempt from levy and sale upon any execution or writ of attachment, or distress for rent; and such articles of property shall continue exempt while the family of such person are removing from one place of residence to another within this state:

First—Family pictures, school books, and library.

Second—A seat or pew in any house or place of public worship.

Third—The sites of burial of the dead.

Fourth—All wearing apparel of the debtor and his family; all beds, bedsteads and bedding, kept and used for the debtor and his family; all stoves and appendages, kept for the use of the debtor and his family; all cooking utensils; and all the household furniture not herein enumerated, not exceeding one hundred dollars in value.

Fifth—The provisions for the debtor and his family,

necessary for six months, either provided or growing, or both; and fuel necessary for six months.

Sixth—The tools and implements, or stock in trade of any mechanic, miner, or other person, used and kept for the purpose of carrying on his trade or business, not exceeding two hundred dollars in value.

Seventh—The library and implements of any professional man, not exceeding three hundred dollars.

Eighth—Working animals to the value of two hundred dollars.

Ninth—One cow and calf, ten sheep, and the necessary food for all the animals herein mentioned, for six months, provided or growing, or both; also one farm wagon, cart or dray, one plough, one harrow, and other farming implements, including harness and tackle for team, not exceeding fifty dollars in value.

Provided, that nothing in this chapter shall be so construed as to exempt any property of any debtor from sale for the payment of any taxes whatever, legally assessed: *And provided further*, that no article of property above mentioned shall be exempt from attachment, or sale on execution for the purchase money for said article of property: *And provided also, further*, that the tools, implements, working animals, books and stock in trade, not exceeding three hundred dollars in value, of any mechanic, miner or other person not being the head of a family, used and kept for the purpose of carrying on his trade and business, shall be exempt from levy and sale on any execution or writ of attachment, while such a person is a *bona fide* resident of this state.

Exemption in case of death or desertion of head of family.

1435. SEC. 27. Whenever in any case the head of a family shall die, desert, or cease to reside with the same, the said family shall be entitled to, and receive all the benefit and privileges, which are in this chapter conferred upon the head of a family residing with the same.

Liability for seizure of exempted property

1436. SEC. 28. If any officer or other person, by virtue of any execution or other process, or by any right of distress, shall take or seize any of the articles of property hereinbefore exempted from levy and sale, such officer or person shall be liable to the party injured for three times

the value of the property illegally taken or seized, to be recovered by action of trespass, with costs of suit.

Personal property only subject to execution on judgments rendered by justices of the peace.

1437. SEC. 29. Nothing in this chapter shall apply to judgments rendered and executions issued by justices of the peace, excepting such as relate to executions levied upon personal property.

Issue of executions against lands and tenements of persons deceased after judgment rendered

1438. SEC. 30. Whenever a judgment is obtained, in any court of record in this state, against any person or persons, who has or shall, after the rendition of said judgment, die, it shall be lawful for execution to issue against the lands and tenements of said deceased person or persons, without first reviving the judgment against their heirs or legal representatives. *Provided, however*, the plaintiff or plaintiffs in execution, or his or their attorney, shall give to the executor or administrator, if there be any, of said deceased person or persons, at least three months' notice, in writing, of the existence of said judgment, before the issuing of execution. *And provided further*, that no execution shall issue until after the expiration of twelve months from the death of such deceased person or persons.

Garnishee process against debtor of defendant; proceedings.

1439. SEC. 31. Whenever a judgment shall be rendered by any court of record or any justice of the peace, in this state, and an execution against the defendant or defendants in said judgment, shall be returned by the proper officer, "no property found," on the affidavit of the plaintiff, or other credible person, being made before the clerk of said court, or justice of the peace, that said defendant or defendants have no property, within the knowledge of said affiant, in his or their possession liable to execution, and that such affiant hath just reason to believe that another person or persons is or are indebted to such defendant or defendants, or hath or have any effects or estate of such defendant or defendants in his or their hands, it shall be lawful for said court, or justice of the peace, to cause the person or persons supposed to have any of the effects or estate of the said defendant or defendants, to be summoned forthwith to appear before said court or justice, as a garnishee or garnishees; and said court, or justice of the peace, shall examine and proceed against such garnishee or garnishees in the same manner as is required by law, against garnishees in original attachments.

Garnishee process not to be quashed for any informality.

1440. SEC. 32. No proceedings against a garnishee or garnishees shall be quashed, or set aside, or said garnishee or garnishees discharged, on account of any insufficiency of the original affidavit or summons, if the plaintiff or plaintiffs, or other credible person for him, shall cause a legal and sufficient affidavit to be filed, or the summons to be amended, in such time and manner as the court, or justice of the peace, shall respectively, in their discretion, direct; and in that event, the cause shall proceed, as if such proceedings had originally been sufficient.

In what manner executor or administrator of plaintiff may proceed to collect judgment.

1441. SEC. 33. The collection of the judgments of courts of record shall not be delayed or hindered by the death of the plaintiff or person in whose name the judgment shall exist, but the executor or administrator, as the case may be, may cause the letters testamentary or of administration to be recorded in the court in which the judgment exists; after which execution may issue and proceedings be hand thereon in the name of the executor or administrator, as such, in the same manner that could or might be done, or had, if the judgment exist or remain in the name and in favor of the executors or administrators, in his, her or their capacity as such executor or administrator.

Lien not suspended by death of plaintiff.

1442. SEC. 34. The lien created by law on property, shall not abate or cease by reason of the death of any plaintiff or plaintiffs, but the same shall survive in favor of the executor or administrator of the testator or intestate, whose duty it shall be to have the judgment enforced in the manner aforesaid.

Real estate purchased at sheriff's sale by executor, etc., to become assets of estate.

1443. SEC. 35. When it shall be necessary in order to secure the collection of any judgment in favor of any executor or administrator, it shall be the duty of such executor or administrator to bid for and become the purchaser of real estate, at sheriff's sale, which real estate so purchased shall be assets in his hands, and may be again sold by him upon the order of the court of probate, and the moneys arising from such sale paid over and accounted for as other moneys in his hands.

1444. SEC. 36. If any debtor shall be engaged in removing his or her property from this state, such property shall not be exempt from levy and sale under execution or

attachment; *provided*, that nothing in this chapter contained shall be held to authorize the levying upon and selling the necessary wearing apparel or beds and bedding of any debtor, or of the family of any debtor, under any execution or attachment. No exemption of property being removed from stat.

1445. SEC. 37. No order of attachment on any garnishee shall be made out or issued in any court of record in this state for any sum less than twenty dollars. Garnishee process not to issue from courts of record for sum less than twenty dollars

1446. SEC. 38. All current gold and silver coin, bank bills, and other evidence of debt, used or circulated or intended to be used or circulated as money, and issued by any corporation or state, or by the United States, may be levied upon under any execution or writ of attachment, as other personal property is levied upon or attached, and shall be returned by the officer making such levy as so much money collected without sale. Levy of execution or attachment on coin, bank bills or other currency.

1447. SEC. 39. Rights and shares of stock in any incorporated company owned or held by any defendant in execution, or by any person in trust for or to the use of any defendant in execution, may be levied upon under any execution or writ of attachment, and may be sold under any execution, in the manner hereinafter provided. Levy of execution or attachment on shares of stock.

1448. SEC. 40. When any execution or writ of attachment shall be issued against any person being the owner of any shares or stock in any incorporated company, or for whom or to whose use any shares or stock in any incorporated company, are held by any person other than such defendant, it shall be the duty of the president, cashier, secretary or chief clerk of such incorporated company, upon the request of the officer having such execution or writ of attachment, to furnish him a certificate under his hand, stating the number of rights or shares which the defendant holds, or which are held in trust for such defendant, or to his use, in the stock of such incorporated company. Certificate of number of shares held by defendant to be furnished officer.

1449. SEC. 41. Any officer, upon obtaining information, in the manner provided in the last section, or otherwise, that a defendant in any execution or writ of attachment held by him, owns or holds any rights or shares in the stock of any incorporated company, or that such rights In what manner levy on shares may be made.

or shares are owned or held by any other person in trust for, or to the use of such defendant, may make a levy of such execution or writ of attachment on such rights or shares, by leaving a true copy of such writ with the president, secretary, cashier or chief clerk, of such incorporated company; and, if there be no such officer, then with some other officer of such incorporated company, with a certificate of the officer making the levy, setting forth that he levies upon and takes in execution or attachment, such rights or shares, to satisfy such execution or attachment.

Sale of shares on execution to be in same manner as personal property.

1450. SEC. 42. Rights or shares in the stock of any incorporated company levied upon by virtue of any writ of attachment, shall be held subject to the judgment rendered in the action in which such writ is issued, and whenever any execution shall be levied upon any such rights or shares, the same shall be sold in like manner as personal property is, by existing law, provided to be sold.

Certificate of sale of shares of stock.

1451. SEC. 43. It shall be the duty of every officer who shall sell any rights or shares of stock in any incorporated company, under an execution, to execute to the purchaser thereof a certificate in writing, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares; and such officer shall also leave, with the president, secretary, cashier, or chief clerk, or if there be none, with any other officer of such incorporated company, a true copy of such certificate; and thereupon it shall be the duty of the officer, clerk, or other person having charge of the books of such incorporated company to make such entries in the books of such company, as may be necessary to vest the legal and equitable title to such rights or shares of stock in the purchaser of the same.

Rights and priviliges of purchaser of shares of stock sold by officer.

1452. SEC. 44. Every purchaser of rights or shares of stock in any incorporated company, at any sale thereof made by any officer, upon receiving a certificate of the sale thereof, as provided in the last section, shall be deemed and held to be the legal and equitable owner of such rights or shares of stock, and he shall be and become entitled to all dividends thereon, and to the same rights and privileges as a member of such incorporated company, as the defendant

in execution was theretofore entitled to, notwithstanding such rights and shares of stock may not have been transferred upon the books of such company.

Every interest in lands subject to levy and sale on execution, except homestead rights.

1453. SEC. 45. Every interest in land, legal and equitable, shall be subject to levy and sale under execution, and the claim or possessory right of any defendant in execution, in or to any public lands, may be levied upon and sold under execution, in the same manner as if the same were held by such defendant in fee-simple: *Provided*, that nothing in this chapter contained shall be so construed as to give any plaintiff in execution the right to levy on any land filed on by any person, in the land office of the Colorado land district, and occupied as a homestead by the defendant in execution.

In what manner judgments or decrees of miners' courts, etc., may be revived.

1454. SEC. 46. Any judgment or decree of the so-called miners', people's, or other courts, which has been or shall be legalized and confirmed by act of the legislature, and which remains unsatisfied in whole or in part, may be revived by writ of *scire facias*, in the district court of the county where the same was rendered, and the same proceedings had thereupon as in other cases.

Judgments on transcripts by justice of the peace.

1455. SEC. 47. Whenever any transcript of any judgment or decree, certified to by the officer before whom the same was rendered, shall be filed with any justice of the peace, where the amount claimed shall not exceed one hundred dollars, such magistrate shall enter judgment thereon, for the amount which shall appear due, subject to the like limitations and appeal, as in other cases.

Judgments of peoples', miners' or Kansas courts legalized and confirmed.

1456. SEC. 48. All judgments and decisions rendered by any of the so-called miners' courts, or miners' clubs, or claim clubs, or people's courts, or Kansas courts, according to the rules and regulations adopted by any neighbohood or mining district, within which are now the limits of the state of Colorado, when both parties made an appearance, or had notice according to such rules, and all the executions, writs, processes, sales or proceedings growing out or resulting from the same, are hereby confirmed and legalized.

To apply to judgments, etc., rendered prior to Aug. 15, 1862.

1457. SEC. 49. The foregoing section shall be deemed to apply to all such judgments, decrees, writs, processes

and sales, had or rendered at any time prior to the fifteenth day of August, A. D. 1862.

Sections 6 and 7 of chapter 47, Revised Statutes, were repealed by the act relating to attachments and executions against the body of a defendant, approved January 11, 1877; section 22 of said chapter, relating to foreclosure of mortgages by *scire facias*, and sections 24, 25, 26 and 27, concerning the levy of attachment writs, have been omitted from this volume for the reason that they are provided for in the Code of Civil Procedure.

CHAPTER LIV.

JURORS.

[Revised Statutes, Chapter XLIX.]

Jury fee to be paid into county treasury.

1458. SECTION 1. A jury-fee of five dollars shall be taxed as part of the costs of the suit in each cause tried by jury. The clerk shall pay such fee when collected, into the county treasury.

Manner of payment of jurors.

1459. SEC. 2. The clerk shall, without fee, furnish to each juror who shall attend at any term of court, a certificate showing the number of days that such juror shall have attended at such term; and upon presentation thereof to the county commissioners, they shall issue to such juror their warrant upon the county treasury for the amount of the per diem and mileage of such juror.

AN ACT CONCERNING JURORS AND JURIES.

Be it enacted by the General Assembly of the State of Colorado:

Who are competent as jurors.

1460. SECTION 1. All male inhabitants of the state of the age of twenty-one years, who are citizens of the United States or have declared their intention to become such citizens, and who have not been convicted of felony, shall be competent to serve as grand and petit jurors in all courts and judicial proceedings in this state.

Who not required to serve as jurors.

1461. SEC. 2. State and county officers, judges and clerks of courts, justices of the peace and constables, attorneys and counselors at law, and persons who are sixty years of age, shall not be required to serve as jurors, if he or they shall ask to be excused from such service. No

person shall be required to serve as a juror, except in the county where he resides, or in the county to which the county of his residence may be attached for judicial purposes. That one is a professional gambler, or that he keeps a house, room or other place in which gambling is carried on, shall be a ground of challenge to the poll.

Selection of competent persons to serve as jurors by county commissioners; apportionment of number to be selected in different counties

1462. SEC. 3. At the regular meeting of the board of county commissioners in each county, sixty days or more before the time appointed for holding a district court in such county, the board shall select of the inhabitants of the county having the qualifications prescribed in this act, and not required by law to serve as jurors, competent persons to serve as jurors in number as follows, to wit:

In counties having three thousand or more voters, two hundred names.

In counties having fifteen hundred, and not exceeding three thousand voters, one hundred and fifty names.

In counties having five hundred, and not exceeding fifteen hundred voters, one hundred names.

In counties having less than five hundred voters, seventy-five names.

Which names when so selected shall be immediately certified to the district clerk of the same county, or if such county shall be attached to another for judicial purposes, then to the district clerk of the county to which such county shall be so attached.

Basis of selection.

1463. SEC. 4. The aggregate of the votes polled for the candidates to any state or county office at the general election held next before the time of selecting persons to serve as jurors, as provided in section 3, shall sufficiently indicate the number of voters in the county within the meaning of this act. The board of county commissioners shall determine the candidates and the office upon which such computation shall be made.

Ballot box for drawing jury.

1464. SEC. 5. The clerk of the district court shall keep a box of suitable dimensions, having two compartments, each of which shall be closed with a lid or cover and fastened with lock and key. An opening shall be made in each of said lids not exceeding two inches in length, and one-fourth of an inch in width, which shall be

for the reception of ballots. The said box shall remain in the possession of the district clerk and shall not be opened except at in the time and in the manner hereinafter specified. The keys to the same shall be kept by the sheriff of the county.

Drawing of grand and petit jurors

1465. SEC. 6. The clerk of the district court shall write the names certified to him as aforesaid on ballots, one name on each ballot, and place such ballots in one compartment of the said box. At least thirty days prior to the term of court, the district clerk shall call to his assistance the sheriff of the county, and in the presence of the sheriff, draw by chance from the compartment of the said box in which the names have been placed, a sufficient number of grand and petit jurors for the next term of the district court of such county. When so drawn the ballots shall be placed in the other compartment of the said box.

Dispensing with grand or petit juries, and drawing of second panel of petit jurors.

1466. SEC. 7. If the business to be transacted at any term of a district court shall not require a grand or petit jury to attend at such term, the judge of such court may, by written order, to be filed with the clerk of the court, dispense with a grand or petit jury at such term, and in that event, no grand or petit jury shall be drawn or summoned. If in the opinion of the judge of any district court, the business to be transacted at any term of such court shall require a petit jury to attend at such term for more than two weeks, he may, by written order, to be filed with the clerk, direct such clerk to draw a second panel of petit jurors, to be summoned to attend after the first panel shall have been discharged. In like manner a third and fourth panel of petit jurors may be drawn, and summoned, and in every case the judge of a district court may direct upon what day of a term of court a *venire* for jurors shall be returnable, and such *venire* shall be issued and made returnable according to such direction. But if no such order shall be made, a *venire* for jurors shall be returnable on the first day of the term.

Selection and drawing of juries in counties attached for judicial purposes.

1467. SEC. 8. Whenever two or more counties are attached for judicial purposes, the board of commissioners in each of the counties so attached, shall select jurors according to the provisions of this act, and transmit the

names of jurors so selected to the clerk of the district court. It shall be the duty of the judge of such district court, at least thirty days prior to every term of such court, to apportion the grand and petit jurors required by law to be summoned to attend at such term, among the several counties so attached, having reference to the population of the several counties, respectively. Thereupon, jurors shall be drawn by the clerk, in the presence of the sheriff, in the manner hereinbefore specified, according to such direction and apportionment made by the judge, and writs of *venire facias* for summoning such jurors shall be issued as in other cases.

Summoning of talesmen.

1468. SEC. 9. Whenever it shall be necessary to summon talesmen, the court may direct that they be summoned from the bystanders, or may issue an open *venire*, as heretofore practiced, or may cause them to be drawn from said box, and if it shall be necessary to bring in a new panel of jurors, the same course may be pursued, and in every such case the *venire facias* shall be returnable as the court shall direct.

Proceedings in relation to jurors at close of service.

1469. SEC. 10. At the end of each term of court, the district clerk shall certify to the board of county commissioners, the names of all persons who have served on any regular panel of jurors at the preceding term, excluding those who have been called as talesmen to complete the panel in one or more causes, and the persons so certified shall not be again returned as jurors during a period of one year thereafter. The district clerk shall also destroy all ballots remaining in said box, and for the succeeding term of court the names of persons shall be certified by the county commissioners, and jurors be drawn in the manner hereinbefore provided. The names of competent persons may be successively returned by the county commissioners, until they have been drawn as jurors, and until they have performed service as such, when they shall be omitted for at least one year.

In case of failure to return list of competent persons, or to draw or summon jurors.

1470. SEC. 11. If the county commissioners shall fail to return a list of competent persons, or if jurors shall not be drawn and summoned as herein provided, the court shall nevertheless have power to cause a jury to be summoned

by open venire as heretofore practiced, or if a list or lists of competent persons has been returned, to cause a jury to be drawn and summoned as the court shall direct. This provision shall extend to both grand and petit juries.

How jurors summoned

1471. SEC. 12. Jurors selected according to the provisions of this act, shall be summoned to attend upon the court by writ of *venire facias* directed to the sheriff of the proper county in the manner heretofore practiced, and such writs may be made returnable upon any day of the term as the court or judge thereof shall direct.

Service of *venire*

1472. SEC. 13. A *venire* may be served by reading the same to the jurors personally, or by leaving a copy thereof at his usual place of abode with some person above the age of sixteen years; and the same shall be served at least five days before the day on which the jurors are required to appear.

Indictment, etc., not to be quashed by reason of informality of return of jurors

1473. SEC. 14. No indictment, nor any array or panel of any grand or petit jury shall be quashed, nor shall any verdict in any case, civil or criminal, be set aside, nor shall judgment in any case, civil or criminal, be stayed or averted, by reason that the county commissioners in selecting such grand jury, or petit jury, to attend at the term of court to which such indictment is returned, or which have returned such indictment or verdict, have returned such jury or any of them in any informal or irregular manner, which in the opinion of the court is unimportant and insufficient to vitiate the return of such jury.

How issues of fact, arising upon challenge of jurors, tried.

1474. SEC. 15. All issues of facts arising upon any challenge to the array of any grand or petit jury, or to individual jurors, shall be tried by the court or by triers appointed as the court shall direct.

Foreman of grand jury; administration of oaths by and indorsement on bills.

1475. SEC. 16. Before the grand jury at any term of court shall be sworn, or affirmed, the court shall appoint a foreman of such jury, and such foreman shall have power to administer an oath, or affirmation to any and all witnesses who may be required to testify before such jury. He shall also indorse upon every bill that may be presented to the grand jury the finding of such jury as that the same is "A true bill," or "Not a true bill," as the case may be, and sign his name thereto, before the same is returned into court.

1476. SEC. 17. Before the grand jury shall enter upon their duties, an oath or affirmation shall be administered to the foreman, as follows, to wit: Oath of grand jurors and foreman.

You, as foreman of this inquest, do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching the present service; you will present no person through malice, hatred or ill-will, and that you leave no one unpresented through fear, favor or affection, or for any fee or reward or the hope or promise thereof; that you will keep secret your own council and that of your fellows touching the present service, and that in all your presentments you will present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding, so help you God.

And an oath or affirmation shall be administered to the grand jurors, as follows, to wit:

You and each of you do solemnly swear (or affirm) that you will well and truly keep and observe the oath that "A. B.," your foreman, has just taken before you, so help you God.

1477. SEC. 18. A grand jury shall consist of twelve persons, nine of whom shall assent to the finding of every true bill. If any of those who may be drawn as grand jurors shall not be summoned, or being summoned, if any fail to appear, talesmen may be summoned to make up the number; and whenever, after a grand jury has been empanneled, it shall be necessary because of sickness or other cause to discharge a member thereof, the court shall cause another competent person to be summoned to take the place of him who was so discharged, and the person so summoned being sworn, shall, with his fellows, have full power and authority in like manner as if he had been first empanneled of the said jury, and no objection to the constitution of such jury for that cause shall be allowed. Grand jury; formation of, etc.

1478. SEC. 19. If any person who shall be lawfully

Penalty for failure of witness to appear before grand jury when summoned.

summoned to appear before any district court, as a grand or petit jury, shall fail, neglect, or refuse to appear as required by such summons, without reasonable excuse, he shall be deemed guilty of contempt, and shall be fined as the court may direct.

Impaneling of petit jury.

1479. SEC. 20. Whenever it shall be necessary to empannel a jury for the trial of any civil or criminal case pending in the district court, the clerk of said court shall, by chance, draw from a box kept for that purpose, the names of a sufficient number of petit jurors to constitute such jury; and if the panel of petit jurors in attendance upon the court shall be exhausted before such jury shall be filled, talesmen may be summoned for the purpose of making up such jury.

Trial of competency of juror.

1480. SEC. 21. If upon the trial of any issue of fact in any civil action, or any issue out of chancery, or of any indictment or information, either party shall desire to introduce evidence of the incompetency, disqualification or prejudice of any jurors selected or called for the trial of such issue, and who by the examination of such juror shall appear to be qualified, competent and unprejudiced, such evidence shall be heard, and the competency of such juror shall be determined by the court without the intervention of triers, and exceptions may be taken and shall be allowed to the questions and answers and decision of the judge as to the competency of such juror, and error may be assigned and prosecuted upon the rulings and decision of the court in relation thereto.

Grand or petit jurors drawn or summoned under previous law.

1481. SEC. 22. In case any term of court is holden within ninety days from the time this act takes effect, the grand and petit jurors for such term shall be drawn and summoned under the provisions of the law existing at the time of the passage of this act, and in case any grand or petit jury shall have been drawn by the court under existing law, such jurors shall be summoned for the term of court actually held following the drawing of such juries, and no term which shall have elapsed shall be counted or considered a term under the provisions of this act.

Approved, March 23, 1877.

CHAPTER LV.

JUSTICES AND CONSTABLES.

[Revised Statutes, Chapter L.]

1482. SECTION 1. Justices of the peace shall have jurisdiction in their respective counties to hear and determine all complaints, suits and prosecutions, of the following description: Jurisdiction of justices of the peace.

First—In actions of debt, on bonds, contracts, agreements, promissory notes, and other instruments in writing, in which the amount claimed to be due does not exceed three hundred dollars.

Second—In actions of *assumpsit* upon any contract or promise, verbal or written, express or implied, for a valuable consideration, in which the amount claimed does not exceed three hundred dollars.

Third—In suits brought for goods, wares or merchandise, sold and delivered; for work and labor done, or services rendered; for money had and received; for money lent; for money received by the defendant for the use of the plaintiff, or for money paid by the plaintiff for the defendant, at his request, in which the amount claimed to be due does not exceed three hundred dollars.

Fourth—In suits for money claimed to be due on unsettled accounts, in which the balance claimed to be due does not exceed three hundred dollars.

Fifth—In suits for money claimed to be due upon settled accounts, between individuals in which the balance ascertained to be unpaid, shall not exceed three hundred dollars.

Sixth—In all suits upon contracts or promises for rent, in which the amount claimed to be due does not exceed three hundred dollars.

Seventh—In actions for debt, for trespass in cutting timber, in which the amount claimed does not exceed three hundred dollars.

Eighth—In actions for money claimed to be due for specific articles of property, whether claimed to be due by bond, note or other instrument in writing, or upon a promise express or implied, in which the value of the property claimed does not exceed three hundred dollars.

Ninth—For all debts or demands claimed to be due, not exceeding three hundred dollars, in which the action of debt or *assumpsit* will lie.

Tenth—In all actions in which an executor or administrator is plaintiff, or for property purchased at an executor's or administrator's sale, where the amount claimed does not exceed three hundred dollars.

Eleventh—In all actions in which an executor or administrator is defendant, where the amount claimed does not exceed three hundred dollars.

Twelfth—In all actions of trespass on personal property, and of trover and conversion, in which the damages claimed do not exceed three hundred dollars.

Thirteenth—In all cases of assault, assault and battery and affrays, in which the people are plaintiffs, in which they shall have exclusive original jurisdiction, unless in cases of cities or incorporated towns, in which jurisdiction is otherwise conferred by law.

Fourteenth—In all actions against sheriffs, coroners and constables for malfeasance, misfeasance or nonfeasance in office, wherein the amount claimed does not exceed three hundred dollars.

Fifteenth—In all actions of trespass to mining claims or other real property, in which the amount claimed does not exceed three hundred dollars.

Where original demand exceeded three hundred dollars, but is reduced by credits.

1483. SEC. 2. In all suits provided for in the preceding section, the jurisdiction of the justice shall be deemed to extend to cases in which the claim, debt, demand or damages may have originally exceeded the sum of three hundred dollars, but shall have been reduced by fair credits below that sum.

Justices authorized to receive money on demands in their hands for collection.

1484. SEC. 3. Justices of the peace, being duly qualified according to law, are authorized and empowered, and it is hereby made their duty, to receive money on all notes and demands which may have been placed in their hands for suit or collection, and also upon all judgments rendered by them prior to the issuing execution thereon.

1485. SEC. 4. It shall be the duty of every justice, whenever a suit shall be commenced before him, to record in a book kept for that purpose, the names of the parties,

the amount and nature of the debt sued for, the date and description of the process issued, and the name of the officer to whom such process shall be delivered; and throughout the whole of the proceedings in any suit, it shall be his duty, whenever any process shall be issued or returned, or any order made, or judgment rendered, to make a written memorandum of the same, in the same book, and to file and safely keep all papers given him in charge.

Record of proceedings of justice, and filing of papers.

1486. SEC. 5. Every suit before a justice, except such as are hereinafter provided for in a different manner, shall be commenced by summons, which shall be in the following form, as nearly as the case will admit, viz:

Commencement of suit before justice; summons, form and service of.

STATE OF COLORADO, }
———— COUNTY, } SS.

To people of the state of Colorado, to any constable of said county, greeting:

You are hereby commanded to summon A. B. to appear before me, at ——, on the —— day of ——, at — o'clock, ——, to answer the complaint of C. D., for a failure to pay him a certain demand, not exceeding three hundred dollars, and hereof make due return as the law directs. Given under my hand and seal, this —— day of ——, 18—.

———————, J. P. [L. S.]

In which summons, the justice shall specify a certain place, day and hour, for the trial, not less than five nor more than fifteen days from the date of such summons, at which time and place the defendant is to appear; which process shall be served at least three days before the time of trial mentioned therein, by reading the same to the defendant or defendants; or in case the defendant is a corporation, by reading the same, and delivering a copy thereof to some officer, agent or clerk of such corporation; if such summons be returned "not served," the cause may be continued, and an *alias* summons issued, returnable in not less than five nor more than fifteen days from the date thereof, and such *alias* shall be served in like manner as original summons, not less than three days before the day set for the defendant's appearance.

Proceedings in case of failure of defendant to appear

1487. SEC. 6. If the defendant, being served with process, shall not appear at the hour appointed for his appearance in such process, or in one hour thereafter, and no sufficient reason is assigned to the justice, why he or she does not appear, then the justice shall proceed to hear and determine the cause, in the absence of said defendant, but shall not give judgment for the plaintiff, unless the said plaintiff fully prove his demand, in the same manner as if the defendant had been present and denied the same.

Dismissal of suit, in case of non-appearance of plaintiff; suit on note in hands of justice not to be dismissed.

1488. SEC. 7. If the plaintiff or his agent, shall not appear at the time appointed for the trial aforesaid, and no sufficient reason shall be assigned to the justice why said plaintiff or his agent does not appear, the justice shall dismiss the suit, and the plaintiff shall pay the costs, unless the defendant shall consent that such suit shall be continued to another day, in which case, the same proceedings shall take place at the second day, so fixed for the trial, as above provided; but this section shall not require the dismissal of a suit, on a note placed in the hand of a justice for collection.

Proceedings in case of several defendants; how judgment to be rendered.

1489. SEC. 8. If two or more persons shall be sued jointly before any justice of the peace, and all of such defendants shall have had notice as aforesaid by warrant or summons, the appearance of any of the said defendants at the time of trial, shall be sufficient to justify the said justice in proceeding as if all were present; and if none of said defendants shall appear after such notice, the justice shall, if the plaintiff's demand be established as aforesaid, proceed as in other cases of default; and in either of the aforesaid cases, the justice shall not divide the amount of the debt proved among the defendants, but shall give one entire judgment for the whole amount proved to be due against so many of the defendants jointly, as shall be proved to be jointly indebted to the plaintiff. But if it shall appear to the justice that any two or more of the defendants are severally indebted to the plaintiff, upon separate and different debts, or causes of action, or upon several or different promises or contracts, such plaintiff shall not be allowed to bring in such separate claims, nor shall the plaintiff be barred by the determination of his suit against such joint

defendants, from prosecuting his suit against the respective defendants, for the recovery of such separate demands.

Proceedings in case of several defendants, where all are not served with process.

1490. SEC. 9. Where there are several joint debtors, and all cannot be served with process, the justice may, on motion of plaintiff, continue the cause, and issue *alias* summons as to the defendants not served; or may render judgment against such defendants as are served; and the plaintiff may at any time thereafter sue out a summons in the nature of a *scire facias*, against the defendants not served, briefly reciting such suit, and the judgment therein, and commanding that such defendants be summoned to show cause why they should not be made parties to such judgment, which summons shall be served in the same manner as other summons; on the return thereof served, the justice shall proceed to hear and determine the cause, in the same manner as if such defendants had been originally served with summons; and the judgment, if for the plaintiff, shall be that such plaintiff recover of such defendants, together with the defendants in the former judgments, his debt or damages, and his costs; if any sum of money hath been paid or collected on such former judgment, the amount shall be credited upon such subsequent judgment, and only the residue of the plaintiff's debt or demand shall be collected.

Continuance, how obtained; not to exceed ten days.

1491. SEC. 10. Previous to commencement of any trial before a justice of the peace, either party may move to have such trial put off for a time not exceeding ten days, upon making proof, either upon his own oath or that of a credible witness, that the said party cannot safely proceed to trial, on account of the absence of a material witness; or on account of any other cause or disability which would prevent him from obtaining justice at such trial; and if the justice be satisfied that the party so applying cannot safely proceed to trial, and also that the party so applying has used due diligence to be ready at the time of trial first appointed, and that his not being ready is not the effect of such party's own neglect or intention, then the said justice shall order the trial of said cause to be deferred to another day and hour, within ten days, to be by him appointed, and the party praying such continuance shall pay all costs occasioned

thereby. *Provided*, the justice may at any time continue any case without oath, if the parties consent, or if but one party be present and shall consent, or if he shall deem it essential to justice to do so, for any good cause shown.

Hearing and judgment; allowance of interest; rate of interest on judgment.

1492. SEC. 11. When the parties shall appear and be ready for trial, the justice shall proceed to hear and examine their respective allegations and proofs, and shall thereon give judgment against the party who shall be proved to be indebted to the other, for so much money in dollars and cents, as shall appear to be due, with costs of suit; but if neither party shall appear to be indebted to the other, then the judgment shall be against the plaintiff, for the costs of suit only; and if such judgment be rendered upon any note or bond, or for a balance due upon a settled account, the justice shall allow interest from the time when the same became due, and include the same in the said judgment; and in all cases, the judgment shall bear interest at the rate of ten per cent. per annum, until paid.

Payment of plaintiff's demand to constable, with costs.

1493. SEC. 12. The justice shall indorse on the back of every summons or warrant the sum demanded by the plaintiff, with the costs due thereon; and the defendant may pay the same to the constable in whose hands such process may be, who shall give a receipt therefor, which shall exonerate the defendant from such debt and costs.

Evidence before justice.

1494. SEC. 13. All evidence before a justice of the peace shall be under oath, by parol, except when it shall be necessary to exhibit the signature or handwriting of a party against him, and except such evidence as shall be taken by deposition, as hereinafter mentioned.

Denial of signature to be under oath.

1495. SEC. 14. No party to any suit before a justice shall be permitted to deny his or her signature to any written instrument upon which suit shall be founded, or which shall be offered as a set-off or acquittance for the debt demanded in such suit, unless the said denial be under the oath of the party so denying the signature purporting to be his or her own.

In what cases deposition of witness residing within the county may be taken.

1496. SEC. 15. If any witness, residing within the county wherein a suit shall be pending before a justice, shall be unable to attend on account of age, sickness, or other cause, it shall be lawful for the justice before

whom such suit shall be pending, or some other justice of the county, to take the deposition of such witness in writing; and the justice before whom suit shall be pending, shall adjourn the trial not more than six days, for that purpose, and shall give both parties notice of the time and place of taking such deposition.

In what cases deposition of witness residing without the county may be taken.

1497. SEC. 16. If any witness whose testimony shall be material in a suit pending before a justice, shall reside out of the county wherein such suit shall be pending, the party desiring it may take his or her or their deposition or depositions, before any justice of the peace in the county in which such witness or witnesses reside, and the depositions taken in conformity thereto may be given in evidence in said suit, if it shall be made to appear that the opposite party had reasonable notice of the time and place of taking such depositions.

Claim acquired after commencement of suit.

1498. SEC. 17. No party shall be permitted to introduce at the trial any bond, note, debt or other claim against his adversary, which he shall have acquired after the commencement of the suit.

Consolidation of claims by each party.

1499. SEC. 18. In all suits which shall be commenced before a justice of the peace, each party shall bring forward all his or her demands against the other, existing at the time of commencing the suit, which are of such a nature as to be consolidated into one action or defense, and on refusing or neglecting to do the same, shall forever be debarred from the privilege of suing for any such debt or demand.

Subpœna; form of and how served.

1500. SEC. 19. When either party shall require the attendance of a witness, in any suit pending before a justice, it shall be the duty of the justice to issue a subpœna in the following form, nearly as the case will admit, viz:

STATE OF COLORADO, }
———— COUNTY, } SS.

The people of the state of Colorado, to A. B.

You are hereby required to appear before me, at ————, on the —— day of ——, at —— o'clock, ——, then and there to testify the truth, in a matter in suit, wherein C. D. is plaintiff, and E. F. defendant; and this you are not to

omit under the penalty of the law. Given under my hand and seal, this —— day ———, 18—.

—— ———, J. P. [L. S.]

Which subpœna may be served by a constable, or any other person, by reading the same to the witness; but no mileage shall be allowed to the person serving the same.

Number of names to be inserted in subpœna.

1501. SEC. 20. In all cases where a justice of the peace is required to issue a subpœna at the instance of either party to a suit, it shall be his duty to insert the names of four witnesses in each subpœna, if the party demanding the same shall require the attendance of that number; and in no case shall a justice of the peace be permitted to charge, and receive pay, for any subpœna commanding the citation of a less number, where as many as four shall be required by the same party at the same time to be used in the same suit.

Witness fees to be taxed as costs; when to be at the expense of parties

1502. SEC. 21. Each witness so summoned shall be entitled to the fees allowed by law, to be taxed with the other costs of the suit, and paid when the debt and costs are collected; but if more than two witnesses shall be sworn in any case to testify to one fact, on the same side, the party requiring such extra witnesses shall be at the whole expense of procuring the same; but no such fee shall be taxed by the justice, unless claimed by the witness attending.

Proving demand, discount or set-off by either party.

1503. SEC. 22. In all trials before justices of the peace, when either party may not have a witness or other legal testimony to establish his or her demand, discount or set-off, the party claiming such demand, discount or set-off, may be permitted to prove the same by his or her own oath, and the adverse party shall also be allowed to testify regarding the said demand, discount or set-off: *provided*, that such party, claiming the benefit of his own oath, shall first make oath that he has a demand, discount or set-off in said cause, and has no witnesses or other legal testimony by which he can prove the same: *And provided, further*, that no person shall be allowed to prove his demand, discount or set-off, unless the adverse party be present or shall have been notified thereof, for which purpose the justice

may continue the cause for such time as may be necessary. This section shall also apply on the trial of causes appealed from justices of the peace to the district court.

Decision of differences by agreement.

1504. SEC. 23. If both parties agree to have a difference decided by a justice of the peace, without process, he shall enter the same on his docket, noting particularly such consent, and proceed as in other cases.

Arbitration and judgment on award.

1505. SEC. 24. In all cases the parties to a suit before a justice shall have the privilege of referring the difference between them to arbitrators, mutually chosen by them, who shall examine the matter in controversy, and make out their award thereon in writing, and deliver the same to the justice, who shall enter the same award on his docket, and give judgment according thereto.

Trial by jury. How jury summoned.

1506. SEC. 25. At any time before any evidence is given in any suit before a justice, either party upon advancing the jury fees, may demand to have the cause tried by a jury; whereupon it shall be the duty of the justice to issue his writ, directed to any constable, commanding him to summon a jury of six men, or twelve if a less number be objected to, and the said jury shall be impaneled as soon as may be, the justice adjourning the cause if necessary, to any time not exceeding three days, for that purpose; the jury when impaneled shall be sworn by the justice to try the cause according to the evidence, and the justice shall enter judgment upon their verdict according to the finding thereof.

Form of *venire*.

1507. SEC. 26. The following shall be the form of the writ for summoning the jurors, viz:

STATE OF COLORADO, }
——— COUNTY, } ss.

The people of the state of Colorado to any constable of said county, greeting:

We command you to summon —— lawful men of your county, to appear before me at ———, on the ——— day of ——, 18—, who are not of kin to A. B., plaintiff, or to C. D., defendant, to make a jury between said parties in a plea of ———; because as well the said plaintiff as the said defendant have put themselves upon the country for trial;

and have you then and there the names of the jury, and this writ. Witness my hand and seal, this —— day of ——.

—— ———, J. P. [L. S.]

Trials of rights of property; number of jurors necessary; how number may be increased.

1508. SEC. 27. In trials of the right of property taken on execution, attachment, or other process, by constables, the number of jurors shall be six instead of twelve, unless the parties shall agree upon a larger number, not exceeding twelve, in which case the number agreed upon shall constitute the jury: *provided*, that either party shall have the right to require twelve jurors upon advancing the additional costs and fees accruing in consequence of increasing the number over six; such additional costs and fees not being in any event chargeable against the other party.

Attachment of witness for contempt.

1509. SEC. 28. In all cases where a witness shall be duly served with a subpœna, and shall fail to attend at the trial, conformably thereto, and in all cases where a person shall be summoned as a juror, to try any cause before a justice of the peace, and shall fail to attend at the time and place appointed in such summons, the justice shall have power to issue an attachment, directed to any constable of the county, commanding him forthwith to bring before such justice, the body of such juror or witness, so failing to attend as aforesaid, to show cause why he should not be fined for a contempt; and on the appearance of such juror or witness on such attachment, it shall be lawful for the justice of the peace to fine him, in any sum, not less than one dollar, nor more than ten dollars, or wholly discharge him, if satisfactory excuse be made.

Incompetency and discharge of juror; summoning of talesmen; challenges.

1510. SEC. 29. If any juror, summoned as aforesaid, shall be interested in the event of the suit, or of kin to either party, or shall have expressed his opinion on the matter about to be tried, or shall, for any cause, to be judged of by the justice, be considered as a partial or improper juror, in that case, the justice shall discharge such juror; and when, by such discharge, or the failure of any juror to attend, the jury shall not be complete, the justice shall direct the constable to summon as many persons as shall be required to complete such jury, instantly, from among the bystanders or other persons in his bailiwick, which

summons shall be verbal; and the person so summoned shall be bound to serve on such jury, and on refusal or failure to do so, may be attached and fined for contempt, as aforesaid. And in all cases of jury trial before a justice of the peace, each party shall be entitled to three peremtory challenges.

Penalty for contempt of court.

1511. SEC. 30. Every person who shall appear before a justice of the peace, when acting as such, or who shall be present at any legal proceeding before a justice, shall demean himself in a decent, orderly and respectful manner, and for failure to do so, such person shall be fined, by the said justice, for contempt, in any sum not more than five dollars.

Change of venue by defendant.

1512. SEC. 31. Previous to the commencement of any trial before a justice of the peace, the defendant, or his or her agent, may make oath, that it is the belief of such deponent, that the defendant cannot have a fair and impartial trial before such justice, whereupon, it shall be the duty of the justice, upon payment of all costs accruing up to the time the change of venue is taken, immediately to transmit all the papers and documents belonging to the suit to the nearest justice of the peace, who shall proceed as if the said suit had been instituted before him.

Continuance for taking deposition of non-resident witness.

1513. SEC. 32. In all cases before justices of the peace, either party may have the case continued any reasonable time, not exceeding one month, for the purpose of taking the deposition of any non-resident witness; which deposition shall be taken in conformity to the manner of taking and returning depositions of non-resident witnesses in the district courts, in this state.

When execution may issue.

1514. SEC. 33. Executions in justices' courts may be issued immediately after rendition of judgment.

When execution returnable; upon what to be levied, and form of.

1515. SEC. 34. All executions issued by a justice of the peace, shall be directed to any constable of the proper county, and made returnable to the justice issuing the same, within thirty days from the date; such execution shall be levied only on personal property, and shall be in the following form, as nearly as may be, viz:

STATE OF COLORADO, }
———— COUNTY, } ss.

The people of the state of Colorado to any constable of said county, greeting:

We command you that, of the goods and chattels of A. B., in your county, you make the sum of —— dollars and —— cents, debt, and —— dollars and —— cents, costs, which C. D. lately recovered before me, in a certain plea against the said A. B., and hereof make return within thirty days from this date. Given under my hand and seal, this ——day of ——, 18——.

—— ————, J. P. [L. S.]

Execution to other county; how issued.

1516. SEC. 35. When it shall appear, by the return of any execution, issued as aforesaid, that the defendant has not personal property within the county, sufficient to satisfy the debt, and it is desired by the plaintiff to have execution issued to some other county, in which it is alleged that the defendant has personal property, the justice shall issue such execution, directed to any constable of the county where such property shall be said to be, to which execution shall be attached an official certificate of the county clerk of the county in which the same shall be issued, setting forth, under the seal of said court, that such justice, so issuing, was at the time of issuing said execution, a justice of the peace in and for said county, and no constable shall be bound to execute any such process unless so authenticated.

How execution to other county served and returned.

1517. SEC. 36. When an execution shall be issued to another county, as provided in the preceding section, it shall be the duty of the constable receiving the same, to proceed to the execution of the same, and make return as in other cases.

In what manner execution may be levied on real property.

1518. SEC. 37. When it shall appear by the return of the execution first issued, as aforesaid, that the defendant has not personal property sufficient to satisfy the debt and costs, within the county in which judgment is rendered, and it is desired by the plaintiff to have the same levied upon real property, in that or any other county, it shall be lawful for the justice to certify to the clerk of the district court of the county in which such judgment was rendered,

a transcript, which shall be filed by said clerk and recorded by him in a book kept for that purpose, at the request and cost of any person interested, either in the judgment or proceedings had under the same; the fee for recording the transcript shall be taxed in the bill of costs against the defendant; such jugdment shall thenceforward have all the effect of a judgment of the said district court, and execution shall issue thereon, out of that court, as in other cases.

Appeals to county court; bond to be given.

1519. SEC. 38. Appeals from judgments of justices of the peace to the county court, shall be granted in all cases, except on judgment confessed: *provided*, the party praying the appeal, shall within ten days from the rendering of the judgment from which he desires to take an appeal, enter into bond, with security, to be approved and conditioned, as hereinafter provided, and pay the cost of granting the appeal only.

Form and condition of bond.

1520. SEC. 39. The bond required to be given, shall be in substance as follows:

Know all men by these presents, that we, A. B. and C. D., are held and firmly bound, unto E. F., in the penal sum of (here insert double the amount of the judgment and costs,) dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Witness our hands and seals, this —— day of ———, 18——.

The condition of the above obligation is such, that whereas, the said E. F. did, on the —— day of ———, A. D. 18——, before —— ———, a justice of the peace in and for the county of ———, recover a judgment against the above bounden, A. B., for the sum of ——— dollars; from which judgment the said A. B. hath taken an appeal to the county court of the county of ——— aforesaid, and state of Colorado.

Now, if the said A. B. shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the court, upon dismissal or trial of said appeal, then

the above obligation to be void, otherwise to remain in full force and effect.

——— ———, [L. S.]
——— ———, [L. S.]

Approved by me, at my office, this ——— day of ———, 18——.

———— ———, J. P. [L. S.]

Proceedings when appeal bond filed with justice.

1521. SEC. 40. The party desiring such appeal may file his bond in the office of the justice who shall have rendered the judgment, such bond to be approved by such justice, whose duty it shall be to suspend all proceedings in the case, and if execution shall have been issued, he shall recall the same, and shall, within twenty days after receiving and approving the appeal bond, file the same in the office of the clerk of the county court, together with all the papers and transcript of the judgment he has given, with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

Proceedings when appeal bond filed in county court; issue of *supersedeas* and summons.

1522. SEC. 41. Or the appealing party may file his bond in the office of the clerk of the county court of the proper county within the time aforesaid, which bond shall be approved by the clerk; upon the filing and approving of which bond, the clerk shall issue a *supersedeas*, enjoining the justice and constable from proceeding any further in said suit, and suspending all proceedings in relation thereto; and shall issue a summons to the appellee to appear at the term of the court to which the appeal is returnable, which summons shall be served and returned as in other cases.

Stay of proceedings on *supersedeas;* return of transcript and papers by justice

1523. SEC. 42. So soon as the clerk shall issue a *supersedeas*, as aforesaid, the justice who gave the judgment and any constable in whose hands an execution or other process may be in relation thereto, shall suspend all further proceedings thereon; and the said justice shall return all the papers, and a transcript of the judgment he had given, to the clerk of the said court with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

Appeal by one or more of several parties, without consent of the others.

1524. SEC. 43. One or more plaintiffs, or defendants, in causes decided by justices of the peace, shall be allowed the right of appeal to the county court without the consent of the others; and when one of several appeals, the *supersedeas* shall issue directing a suspension of all further proceedings upon the judgment, as though all had joined in the appeal.

Issue of summons to parties not joining in appeal; judgment in such case.

1525. SEC. 44. When an appeal bond shall be executed by one of several parties, from the judgment of a justice of the peace, the clerk of the county court shall issue a summons against the other parties, notifying them of the appeal in the said county court, and requiring them to appear, and abide and perform the judgment of the court in the premises, which summons shall be served as other process issued in appeal cases; and in case such summons shall be returned that parties are not found, the cause shall at the first term of the court be continued, but at the second term shall be tried; the court shall have power to give the same judgment in the appeals taken under the preceding sections, as though all the parties to the judgment had joined in the appeal.

Informality or insufficiency of bond.

1526. SEC. 45. If, upon the trial of any appeal, the bond required to be given shall be adjudged informal, or otherwise insufficient, the party who shall have executed such bond, shall in nowise be prejudiced by reason of such informality or insufficiency; *provided*, he will, in a reasonable time, to be fixed by the court, execute a good and sufficient bond.

Exceptions to form and service of summons not allowed; pleadings not required to be in writing.

1527. SEC. 46. Upon the trial of all appeals before the county court, no exception shall be taken to the form or service of the summons issued by the justice of the peace, nor to any of the proceedings before him; but the court shall hear and determine the cause in a summary way, according to the justice of the case, without pleading in writing.

Dismissal for want of jurisdiction.

1528. SEC. 47. If it shall appear, however, that the justice had no jurisdiction of the subject matter of the suit, the same shall be dismissed, at the cost of the plaintiff.

Parties and rights on appeal same as in original action.

1529. SEC. 48. The plaintiff in the justice's court shall be the plaintiff in the county court on the trial of the ap-

peal; and the rights of the parties shall be the same as in original actions.

Liability of surety on appeal bond

1530. SEC. 49. The security in any appeal bond shall be liable thereon for the amount of the original judgment and all costs thereon, in case the said appeal be dismissed; and shall be liable also on said bond for whatever judgment may be rendered by the county court in case the original judgment be affirmed by the said county court, either in whole or in part.

Issue of executions on judgments in cases appealed.

1531. SEC. 50. Execution may issue out of the county court on all judgments rendered in cases appealed, as in other cases originating in the county court.

How writ of *certiorari* obtained.

1532. SEC. 51. The judges of the district and county courts shall have power within their respective jurisdictions, and it shall be their duty, upon application made as hereinafter mentioned, to grant writs of *certiorari* to remove causes from before justices of the peace into the district court, who shall indorse an order for the same upon the petition of the party praying such writ; and on producing the same to the clerk of the district court, he shall issue said writ in conformity to the provisions of this chapter.

Limit of time within which *certiorari* can issue

1533. SEC. 52. No writ of *certiorari* shall issue after the expiration of six months from the time of the rendition of judgment.

Bond to be given on application for writ of *certiorari*; substance of writ

1534. SEC. 53. Before any writ of *certiorari* shall issue the party applying therefor shall give bond, with security, in the same manner, and with the same condition, and the same where defective may be perfected, as bonds in cases of appeals from justices of the peace. The writ of *certiorari* shall require the justice to certify to the district court, a transcript of the judgment and other proceedings had before him, and in no case shall the justice be required to send up a minute or memorandum of the evidence given before him; but upon the return of said writ such proceedings shall be had thereon as in cases of appeals.

What petition for writ of *certiorari* shall show.

1535. SEC. 54. The petition, on application for writs of *certiorari* shall set forth and show upon the oath of the applicant that the judgment before the justice of the peace was not the result of negligence of the party praying for such writ, that the judgment, in his opinion, is erroneous

and unjust, setting forth wherein the error and injustice consists, and that it was not in the power of the party to take an appeal in the ordinary way; setting forth the particular circumstances which prevented him from so doing.

Stay of proceedings on writ of *certiorari*.

1536. SEC. 55. The justice of the peace, constables, and other persons concerned, shall, as soon as the writ of *certiorari* shall be served, stay all further proceedings in that case, until the further order of the district court.

Reversal of judgment of justices; effect of.

1537. SEC. 56. If the judgment of the justice shall be reversed by the district court, in whole or in part, such reversal shall not vitiate any sale on execution which shall have been effected before the issuing of the writ of *certiorari;* but in such cases, the district court shall have power to assess the damages which shall have accrued in consequence of such sale, and cause judgment to be entered, or a deduction made, therefor; and in all cases of a partial reversal of judgment either in cases of appeals or *certiorari*, the court shall have power to apportion the costs between the parties, according to justice.

Lien of judgment of justices upon real and personal property; when to commence.

1538. SEC. 57. The personal property of every defendant in a judgment before a justice of the peace, shall be bound for the payment of such judgment from the delivery of the execution issued thereon to the constable; and the real property of such defendant shall be bound, as aforesaid from the date of the filing of a transcript of the judgment in the clerk's office, as provided for in this chapter.

Proceedings of constables on delivery of execution to him.

1539. SEC. 58. Every constable to whom an execution shall be delivered, shall indorse on the back of the same, an exact memorandum of the day and hour when the same shall have come to his hands; and shall immediately proceed to levy the same, indorsing, also, on the back of the execution, the date of such levy, and making an exact inventory of the property on which the same shall have been levied; and shall appoint a day and hour for the sale of such property, giving ten days' previous notice of such sale, by advertisement, in writing, to be posted up at three public places in the county; and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest and costs, to the highest bidder.

Removal of property levied upon, for safe keeping; forthcoming bond; proceedings on forfeiture of.

1540. SEC. 59. Any constable shall be authorized to remove property levied on by him, when it shall be necessary for safe keeping of the same: *provided*, that if the defendant shall desire to retain the property so levied on, until the day of sale, it shall be lawful for the said constable to allow the defendant to keep the same, if the said defendant shall give bond to the said constable, in double the amount of the execution, with good security, conditioned for the delivery of said property, to the same constable, at the time and place of sale, to be named in the bond; and if the said property shall not be delivered, as aforesaid, at the time and place of sale, the constable having the execution, may proceed to levy the same, upon the same or any other property of the defendant, or upon the property of the security in such bond; and shall sell the same, giving two days' public notice of such sale, by advertisement, to be posted at one public place.

Discharge of subsequent costs upon tender of amount due with costs accrued.

1541. SEC. 60. When the defendant, upon whom any summons or warrant, issuing from a justice of the peace, shall be served, shall pay or tender to the constable, the amount actually due, with all costs then accrued, and shall prove the same upon trial, and bring the money forward and deposit it with the justice of the peace, no costs which shall thereafter accrue, shall be adjudged against him, but the plaintiff shall pay the same.

Payment of moneys collected on execution, to justice. Posting list of witness fees; penalty for failure to do so.

1542. SEC. 61. On the return of all executions, the constable shall pay over to the justice of the peace who issued the same, all money not previously paid over to the plaintiff, and also all witness fees which remain unpaid to any witness; and it shall be the duty of the justice of the peace, to post up in his office, at least once in three months, a list of all witness fees in his hands, and the name or names of the persons to whom they belong; and for a failure to comply with this provision, a justice of the peace shall be liable to a fine of fifty dollars, to be recovered in an action of debt in the name and behalf of the county.

1543. SEC. 62. No person who is not a resident of this state shall commence an action before a justice of the peace, until such non-resident shall file with the justice before whom such action may be brought, a bond, with sufficient

security, for the payment of all costs which may be awarded against the plaintiff, should he fail in his suit; which bond shall be in the following form, as near as may be, inserting the names of the parties, the county and state:

Security for costs by non-resident; form of.

STATE OF COLORADO, }
——————— COUNTY, } SS.

A. B. *vs.* C. D.

Demand $——.

I, E. F., do enter myself security for all costs that may accrue in the above case, this —— day of ——, 18——.

E—— F——. [L. S.]

1544. SEC. 63. Such bond shall be signed by the security, and if the said plaintiff shall be defeated in his suit, discontinue or make default, and shall not, within ten days thereafter, pay to the justice all costs that may have been occasioned to the defendant, to the justice and constable, jurors or witnesses, the justice shall issue his execution against the security, for the amount thereof, accompanied by a bill of costs, in which shall be set down every particular charge. And if any suit shall be commenced by a non-resident, as aforesaid, without filing a bond for costs, as aforesaid, the suit shall be dismissed on the motion of the defendant, and the plaintiff shall be liable to pay all costs occasioned thereby, and execution may issue therefor as in other cases.

Issue of execution against security for costs. Dismissal of suit for failure to give security for costs.

1545. SEC. 64. When any defendant shall evade the service of process, and not listen to the same, or secrete himself, then the officer shall serve the same by leaving a copy at his place of residence, with some white person of the age of ten years or upwards, and in all such cases, the constable shall make a special return when and how served, and the circumstances attending the same; and if the justice shall be satisfied that the defendant evaded the service by reading, and that the party is sufficiently notified and summoned, he shall proceed to hear and determine the case.

Evasion of service of process by defendant.

1546. SEC. 65. Any justice of the peace may appoint a suitable person to act as constable in a criminal or other case, where there is a probability that a person charged

Appointment of special constable

with an indictable offense will escape, or that goods and chattels will be removed, before application can be made to a qualified constable, or whenever no qualified constable can conveniently be found in the township; and the person so appointed, shall act as constable in that particular case and no other; and any temporary appointment so made, as aforesaid, shall be made by a written indorsement, under the seal of the justice deputing, on the back of the process which the person receiving the same shall be deputed to execute.

Duties of constables.

1547. SEC. 66. It shall be the duty of every constable, when any felony or breach of the peace shall be committed in his presence, forthwith to apprehend the person committing the same, and bring him before some justice of the peace, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, and also to serve and execute all warrants, writs, precepts and other process, to him lawfully directed; and generally, to do and perform all things appertaining to the office of constable within this state.

Duties of justice in cases of assault, assault and battery, and affrays.

1548. SEC. 67. In all cases of assault, assault and battery, and affrays, any justice of the peace may, upon his own knowledge, or upon the oath of any competent person, issue his warrant, to any constable of his county, for the arrest of every person charged with either of said offenses; and upon the arrest of such person, shall cause a jury to be summoned, unless the party accused shall dispense with a jury, who shall hear the cause, and if they find the accused guilty, shall assess such fine as they shall deem just; not, however, to be less than three, nor more than one hundred dollars.

Judgment.

1549. SEC. 68. Upon the jury returning their verdict of guilty, and the assessment of the fine, the justice shall record the same in his docket, or record book, and proceed to render judgment thereon, for the amount of said fine and costs; but if the jury return a verdict of not guilty, the justice shall record the same, and discharge the defendant or defendants, without costs.

1550. SEC. 69. Upon the rendition of such judgment, the justice shall issue execution for the fine and costs,

which may be levied upon any personal property of the defendant or defendants, which shall be sold for whatever it will bring in cash, after giving notice as in other cases: *provided, however,* that if the party so convicted have a family, then the constable shall reserve from execution, one bed and bedding, one cow, and five hundred dollars' worth of household and kitchen furniture. Execution; what property exempt.

1551. SEC. 70. If the constable shall return, on such execution, that the defendant or defendants have no goods and chattels whereof to make the money, the justice shall issue a *capias*, against the body of the defendant or defendants; and the constable shall arrest such person or persons, and commit him or them to the jail of the county, there to remain forty-eight hours, and if the fine exceed ten dollars, then to remain in the said jail twenty-four hours for every five dollars over and above the said ten dollars, and so on, in proportion to amount of said fine. Commitment in default of payment of fine and costs.

1552. SEC. 71. If any person convicted of any criminal offense, before any justice of the peace, shall wish to appeal to the county court, he shall signify the same to the justice of the peace who gave the judgment, and the justice shall give him a statement of the amount of the fine and costs, and upon producing the same to the clerk of the county court of the proper county, the clerk shall write a bond to the people of the state of Colorado, in a penalty double the amount of the fine, and a sufficiency to cover all costs, conditioned for the payment of the amount of whatever judgment the court may render against the defendant; which the said party appealing shall execute, with sufficient security, to be approved by the said clerk; and when such bond shall be executed, the clerk shall notify the justice who tried the cause thereof, and the said justice shall stay all further proceedings, and return the papers to the next succeeding term of the county court, when the same shall be tied: *provided,* all such appeals shall be prayed for, and the bond executed within ten days after the judgment rendered. Appeals to county court in criminal cases; amount and condition of bond.

1553. SEC. 72. If the defendant shall be found guilty in the county court, judgment shall be rendered against both principal and security in the appeal bond, for the How judgment to be rendered in county court.

amount of the fine assessed by the jury in said court, and all costs that may have accrued.

Names of witnesses to be returned to county court by justice.

1554. SEC. 73. When any defendant convicted of any of the said offenses, appeals to the county court, it shall be the duty of the justice to return to the clerk, when he returns the papers in the case, the names of all material witnesses who shall have testified on the trial, and the clerk shall issue subpœnas for them.

Judgment and execution on plea of guilty.

1555. SEC. 74. If any person, accused of either of the above offenses, shall confess himself guilty, the jury or the justice, if he shall not require a jury, shall hear the evidence and assess the fine, and the justice shall enter judgment and issue execution, subject to appeal, as in other cases.

Offenses not to be prosecuted after expiration of twelve months, unless offender has fled to avoid trial.

1556. SEC. 75. No person shall be proceeded against for the commission of any offense herein specified, after the expiration of twelve months from the time the offense was committed, unless the offender shall withdraw himself from the county for the purpose of avoiding trial, in which case he shall be tried at any time within twelve months after his return or apprehension.

Statement of fines to be returned to county treasurer.

1557. SEC. 76. It shall be the duty of each of the justices of the several counties, to return, quarterly, to the county treasurer thereof, a list of all fines before them assessed, stating the name or names of the defendant or defendants, and to pay over to said county treasurer any and all money by him received, arising from fines by him received, and a failure of any such justice before whom any fine shall have been assessed or paid, under the provisions of this chapter, to make such returns, shall work a forfeiture of double the amount of the fines assessed before them, to be recovered as prescribed in the succeeding section.

Payment of fines collected by constable to justice; penalty for failure so to do.

1558. SEC. 77. The constable charged with the collection of any such fine, shall account for and pay over to the justice of the peace imposing the fine, all moneys which he may have collected, immediately; and upon failure to do so, he shall forfeit and pay double the amount of money so received, to be recovered in the name of the county treasurer of the proper county, for the use of the county, in any

court having jurisdiction thereof; the constable shall also be authorized to receive all fines before execution issued, and shall account therefor, and pay over the same, in the same manner and under the same penalties as before provided.

Judgment against complainant in case of malicious prosecution.

1559. SEC. 78. In all criminal prosecutions before a justice of the peace, where the party accused shall be found not guilty, and it shall appear to the justice before whom such case shall be tried, that there was no reasonable ground for his prosecution, and that it was maliciously entered, in such case the justice of the peace is hereby authorized to give judgment against the complainant for the costs of said suit, and issue execution thereon.

Completion of unfinished business of justice by successor.

1560. SEC. 79. When the docket and papers of any justice of the peace shall be transferred to any other justice of the peace, as provided in the next section of this chapter, such justice receiving the same may proceed to the completion of all unfinished business, the issuing of executions upon judgments remaining unsatisfied upon said docket, and collect the same; and shall have the same power in respect of such docket and papers, as if the same pertained to proceedings originally instituted before him.

Disposition of docket and papers of justice in case of resignation, removal or death.

1561. SEC. 80. When any justice of the peace shall resign his office, or remove from the county or district in which he was elected, it shall be his duty to deliver his docket and papers relating to the business transacted before him, to the nearest justice of the peace of his county, and to return to the office of the clerk of the county all copies of the statutes which he may have received from that office; and in case of the death of any justice of the peace, it shall be the duty of the person having possession of said docket, papers and statutes to deliver them over as aforesaid.

Collection of executions by constable when term has expired

1562. SEC. 81. Any constable to whom an execution shall have been delivered, and whose term of office shall expire before the expiration of the time within which the return of such execution is required by law, shall be authorized to proceed in all matters relating to said execution, and in the same manner to collect the same, that he might have done, had the term of office of such constable not

have expired; and the constable and sureties shall be liable for any neglect of duty, and for all moneys collected upon such executions, in the same manner and to the same extent they would have been if the term of office of such constable had not expired.

Bonds of justice and constable to remain in force for three years after expiration of term; giving of new bond not to vacate former one.

1563. SEC. 81. All bonds given by justices of the peace and constable shall remain in force three years after the expiration of their respective terms of office; and when such bonds are renewed, or new bonds given, such renewal or giving of a new bond, shall not satisfy or vacate any such previous bond; but each bond shall stand good in relation to all matters and things done or omitted to be done within the term of office for which such bond shall have been given. *Provided*, that where, by law, any justice or constable shall be authorized or required to complete any business, or perform any duties growing out of business commenced and in their hands previous to going out of office, the bond shall apply to such cases, until such business is concluded by such justice or constable.

Penalty for failure to deliver books, papers, etc., upon demand.

1564. SEC. 82. Any justice of the peace failing or refusing to deliver any statutes, books, dockets or papers, as required by this chapter, for the space of ten days after the same are demanded, shall forfeit and pay the sum of ten dollars, to be recovered by an action of debt in the name of the county treasurer, for the benefit of the county, besides being, together with his securities in his official bond, liable to the county and to all persons interested for all damages and losses which may be sustained by reason of such failure or refusal.

Manner of proceeding against justice failing to pay over moneys collected; damages for detention.

1565. SEC. 84. Upon the failure of a justice of the peace or constable to pay over any money by him collected or received, as herein provided, to any person entitled to receive the same, his or her agent or attorney, such person may proceed against such justice or constable in a summary way, either before a district court or some justice of the peace of the proper county, by motion, upon giving to such justice or constable five days' notice of the application, and recover the amount so neglected or refused to be paid, with twenty per cent. damages thereon for such detention; and shall have execution therefor.

1566. SEC. 85. If any justice, or constable, against whom proceedings shall have been commenced, as provided in the preceeding section, shall pay or satisfy the amount claimed by the party prosecuting, with the costs, the proceedings shall be dismissed, without judgment for the damages specified in the preceding section.

Dismissal of suit upon payment of amount demanded, with costs.

1567. SEC. 86. If any constable shall neglect or fail to return an execution within ten days after its proper return day, or if the demand, debt or claim be wholly or in part lost, or if any special damages shall arise to any party by reason of the neglect or refusal to act, or the misfeasance or nonfeasance of any constable, in the discharge of any official duty, the party aggrieved may have his action in the district court, or, when the amount claimed does not exceed three hundred dollars, before any justice of the peace, of the proper county, against such constable and his securities on the official bond of such constable, and shall recover thereon the amount of said execution, with interest from the date of the judgment, upon which the original execution issued.

Action against constable for neglect or failure to return execution within specified time.

1568. SEC. 87. In suits on the official bonds of justices of the peace and constables, a copy of such bond, authenticated under the official signature and seal of the clerk of the county with whom it is filed, may be read in evidence.

Certified copies of bonds to be evidence

1569. SEC. 88. When judgment shall have been rendered against any justice of the peace, or constable, and his securities on his official bond, execution may issue against all of them; but the officer executing the same, shall not levy upon the property of the securities, until he shall fail to find sufficient property of the justice of the peace, or constable, to satisfy such execution: *provided, however*, the execution shall be a lien on the property of the securities, as in other cases.

Property of sureties on bonds of justice or constable not to be levied upon until that of principal exhausted.

1570. SEC. 89. In all cases of suits on the official bonds of justices of the peace and constables, judgment shall be entered for the full penalty of the bond in favor of the people of the state of Colorado; but execution shall only issue for the amount found to be due, with interest and costs.

Judgment for full penalty of bond; execution for amount due.

1571. SEC. 90. After such judgment is obtained, the

Subsequent executions for breach of conditions of bond.

court may, from time to time, award execution against the defendant or defendants for any breach of the conditions of their bond, or for the violation of any of the provisions of this chapter; no such subsequent execution shall, however, be issued, until the defendants shall be summoned, by writ of *scire facias*, in the usual form, to appear, and show cause why such execution shall not be awarded.

Liability of sureties and of principal.

1572. SEC. 91. Securities shall not be liable in execution, beyond the amount of the penalty of their bond; but the liability of the principal shall continue after the penalty of the bond is exhausted, and the court may continue to award execution, as occasion may require.

Appeals, etc., in suits against justices, constables and their sureties.

1573. SEC. 92. Justices and constables, and their securities, may have the benefit of appeal, *certiorari*, and writ of error, from all decisions and judgments, rendered in suits against them, as is provided in other cases.

How recognizances of accused persons may be taken.

1574 SEC. 93. Any justice of the peace, before whom any person is brought, on complaint for any crime, misdemeanor, or other offense, bailable by the laws of this state, may take the recognizance of such person or persons, with surety or sureties, in a reasonable sum, for his appearance before said justice for further examination, at a future time, not exceeding ten days; at which time and place all subpœnas in the case shall be made returnable.

Default in recognizances to be certified to district court.

1575. SEC. 94. If the person thus recognized, shall not appear before the said justice at the time appointed for further examination, as set forth in the recognizance, it shall be the duty of the said justice to note his default upon the record, and certify the same recognizance, with the record of the default in the performance of the condition thereof, to the district court of his county, that a *scire facias* may issue thereon, or an action of debt be brought for the recovery of the penalty.

Issue of writ of attachment on affidavit and bond filed.

1576. SEC. 95. If any creditor, his agent or attorney, shall file with any justice of the peace in this state, an affidavit, as specified in the following section, stating the amount due and unpaid, and a bond to be approved by the justice in double the amount of the plaintiff's claim, it shall be lawful for the justice of the peace to issue a writ of attachment against the personal estate of said debtor.

1577. SEC. 96. The writ of attachment and bond shall be substantially the same in form as the writ and bond set forth in the chapter concerning attachments in the district court, as far as the same are applicable. The affidavit shall set forth one or more of the grounds specified in the said chapter, upon which a writ of attachment may issue, and the proceedings before a justice of the peace shall conform to, and be governed as near as may be, by the provisions of the said last mentioned chapter, except as hereinafter provided.

Form of writ and bond; what affidavit shall set forth

1578. SEC. 97. If, upon the return of the attachment, it shall appear that the defendant has not been personally served, and no appearance be entered for him, the justice shall continue the case ten days, and immediately cause a notice to be posted up in three public places in the neighborhood of the justice, directed to the defendant, stating that an attachment has been issued and levied, at whose instance the amount claimed to be due, and the time and place of trial; and also stating that unless the defendant shall appear at the time and place fixed for trial, judgment will be entered by default and the property attached ordered to be sold to satisfy the same.

Proceedings in case defendant not served; notice to be given.

1579. SEC. 98. When notice shall be given as required by the preceding section, the justice shall proceed to hear and determine the cause as though process has been personally served upon the defendant; and if judgment be given against the defendant, shall order a sale of the property attached, or so much thereof as will satisfy the judgment and costs of suit.

Judgment and execution after notice.

1580. SEC. 99. The right of property may be tried, and appeals taken, under the provisions of the four preceding sections, as in ordinary cases, and the same are to be construed in the most liberal manner, in all courts, for the detection of fraud.

Trial of rights of property: appeals and liberal construction.

1581. SEC. 100. Justices of the peace, in their respective counties, shall have jurisdiction in actions of replevin, where the value of the property sought to be replevied, and the damages claimed, do not exceed three hundred dollars.

Jurisdiction in actions of replevin.

1582. SEC. 101. Suit shall be commenced before jus-

Where suit to be commenced.

tices, in the township in which the debtor or person sued resides, unless the cause of action occurred in the township in which the plaintiff resides, in which case the suit may be commenced where the cause of action accrued or is specifically made payable.

In case no justice in township.

1583. SEC. 102. If no justice of the peace shall reside in the township in which the defendant resides, or in which the cause of action accrued, the suit shall be brought before the justice of the peace nearest to the residence of such debtor within the county.

Change of venue

1584. SEC. 103. Plaintiffs shall in all cases be allowed a change of venue, in the same manner as is now provided by law for defendants.

Delivery of dockets, papers, etc., to successor, upon expiration of term of office of justice.

1585. SEC. 104. That whenever the term of office for which any justice of the peace may have been elected shall expire, it shall be the duty of such officer to deliver over his docket, statutes, and all papers relating to the business transacted before him, to his successor in office, upon demand, after such successor shall have been qualified according to law, whose duty it shall be to proceed to the completion of all unfinished business, to issue executions upon judgments remaining unsatisfied upon such docket, and to collect the same, and have the same power in respect to such docket and papers as if the same pertained to proceedings originally instituted before him.

AN ACT CONCERNING PRELIMINARY EXAMINATIONS ON CRIMINAL CHARGES BEFORE JUSTICES OF THE PEACE.

[Session Laws, 1876.]

Testimony of accused persons.

1586. SECTION 1. That in all preliminary examinations of persons arraigned before justices of the peace upon any criminal charge, the accused, if he so desire, shall have the privilege, after all witnesses have been heard, of making a statement before the justice; and such statement may be made under oath, or otherwise, as the accused may elect.

AN ACT TO REPEAL SECTIONS SIXTY-SEVEN AND SIXTY-EIGHT OF CHAPTER FIFTY OF THE REVISED STATUTES OF COLORADO, RELATING TO THE ATTACHMENT OF THE BODY AND ISSUING EXECUTIONS AGAINST THE BODY OF A DEFENDANT IN CIVIL ACTIONS, AND TO ENACT OTHER PROVISIONS IN LIEU THEREOF, AND TO RELEASE ALL PERSONS NOW UNDER ARREST OR CONFINED IN JAILS IN VIRTUE OF SUCH PROCESS ISSUED IN CIVIL ACTIONS.

Be it enacted by the General Assembly of the State of Colorado:

1587. SECTION 1. That sections sixty-seven and sixty-eight, of chapter fifty; and sections six and seven, of chapter forty-eight, of the revised statutes of Colorado, be, and the same are, hereby repealed. Repealing certain sections of revised statutes.

1588. SEC. 2. It is hereby made the duty of all sheriffs, keepers of jails, constables, or other officers, in any county, city or town of this state, at once to liberate and release from custody or confinement, any person or persons now held by them under arrest, or in jail or other place of confinement, who have been arrested, committed or held in restraint of their liberty on any civil process, whether original or *mesne*, heretofore issued by any territorial or state court or courts, under and in virtue of any of the several sections of the statutes repealed by this act. Liberation of persons now in confinement.

1589. SEC. 3. No execution shall hereafter issue against the body of any defendant in a civil action, except as hereinafter provided. Execution not to issue against body of defendant except in certain cases.

1590. SEC. 4. In any civil action pending or hereafter begun in any court of record or before any justice of the peace, where it shall appear from the summons and other papers in the cause, that the action is founded upon tort, and upon trial of the said cause the finding shall be in favor of the plaintiff or plaintiffs, and the verdict of the jury or the finding of the court, if tried without a jury, shall state that in committing the tort complained of, the defendant or any one or more of the defendants if there be more than one, was or were guilty of either malice, fraud or wilful deceit, then, and in any such case, the plaintiff may have execution as hereinafter provided against the body of any defendant against whom such finding was had or any judgment rendered on any finding as aforesaid; *provided*, that in no case, shall an execution issue against the body of a person when the person shall have been convicted in a criminal prosecution for the same wrong. When execution against body of defendant may issue.

Court to fix time of imprisonment, not to exceed one year; defendant to be released on payment of judgment.

1591. SEC. 5. If the finding of the court or jury, as the case may be, in any such action, shall contain a statement as is provided in section four of this act, it shall be the duty of the court or justice of the peace before which such case shall be tried to enter upon its or his docket, in the discretion of the court, according to the aggravation of the circumstances as proved at the trial, the term for which a defendant or defendants may be committed to jail on a writ of execution against the body in such case. Such term not to exceed one year in any case, and the execution and mittimus shall state the time so fixed by the court. *Provided*, that no execution shall issue against the body if the amount of the judgment shall have been paid, and that any person committed to jail by such process shall be released therefrom at once, upon the payment of such judgment.

Costs and expenses of imptisonment to be paid by county if defendant be a poor person; otherwise to be paid by plaintiff.

1592. SEC. 6. All costs, charges and expenses of such imprisonment shall be paid out of the county treasury of the county in which such action is tried, and imprisonment had, when the party plaintiff shall, before such imprisonment takes place, present to the officer having the execution, his affidavit that he is a poor person, and not able to pay the costs of such imprisonment; otherwise, all such costs shall be paid by the plaintiff, and the said judgment shall not be satisfied in whole or in part by any such imprisonment; but the plaintiff or plaintiffs may have execution against the goods and chattels, lands and tenements of the defendant or defendants, whether against the body or or not, and shall not take the body on execution but once in any such action.

Imprisonment not satisfaction of judgment; execution may issue against property.

Emergency

1593. SEC. 7. Inasmuch as it is believed that persons are now imprisoned in the state upon execution issued against the body, and it is feared that under the heretofore existing law such imprisonment can not be terminated, therefore, this general assembly believes that an emergency exists requiring this act to take effect without delay; therefore, this act shall take effect immediately.

Approved, January 11, 1877.

AN ACT REGULATING THE PRACTICE IN CASES OF PRELIMINARY EXAMINATIONS BEFORE JUSTICES OF THE PEACE WHILE ACTING AS CONSERVATORS OF THE PEACE.

Be it enacted by the General Assembly of the State of Colorado:

1594. SECTION 1. Hereafter when a party is brought before a justice of the peace on the charge of making threats against the life or property of any person in this state, or shall threaten to break the peace, the justice shall write down the evidence in full, and shall (if defendant is required to give bond for his good behavior) transmit such testimony together with the other papers in the case to the district court of the county wherein the offense was committed.

Testimony in case of breach of the peace, etc.; to be taken in writing and transmitted to district court.

1595. SEC. 2. When the clerk receives such papers from the justice, he shall docket the case, and thereafter the case shall stand for argument at the following term of court. The judge shall examine the record and evidence, and if upon such record and evidence, the judge shall be of the opinion that the defendant was improperly bound over, he shall discharge the defendant, and tax the costs against the county, or the prosecuting witness as in his judgment is proper. It shall be the duty of the court to examine and pass upon the record and evidence, even though the prosecuting witness does not appear to prosecute. If the judgment of the justice shall be affirmed, the judge may require the defendant to renew his bond, or may discharge the defendant therefrom; in such cases the cost shall be taxed against the defendant.

Proceedings in district court in such cases.

1596. SEC. 3. All acts and parts of acts in conflict with this act are hereby repealed.

Repeal.

Approved, February 24, 1877.

AN ACT IN RELATION TO THE JURISDICTION OF JUSTICES OF THE PEACE AND THE PRACTICE IN JUSTICES' COURTS.

Be it enacted by the General Assembly of the State of Colorado:

1597. SECTION 1. The jurisdiction of justices of the peace in this state shall hereafter be limited, in civil actions, to cases wherein the value of the property or the amount in controversy does not exceed the sum of three hundred dollars.

Jurisdiction of justices in civil actions.

Jurisdiction in actions of covenant.

1598. SEC. 2. In addition to the civil causes wherein justices of the peace now have jurisdiction, jurisdiction is hereby conferred in actions of covenant, where the damages claimed do not exceed three hundred dollars.

Appeals to be taken to county court only.

1599. SEC. 3. All appeals from judgments of justices of the peace, both in civil and criminal actions, shall be taken to the county court of the same county, and no appeal shall lie from a judgment of a justice of the peace in any cause, civil or criminal, to the district court.

What civil actions may be certified to district court.

1600. SEC. 4. In all civil actions before justices of the peace relating to real estate, if it shall be made to appear in any manner that the value of the property in controversy is in excess of said limit of the justices' jurisdiction, the justice shall at once suspend all proceedings therein, and certify and send said cause and transmit the papers therein to the district court of the same county. If in any action before a justice of the peace relating to real estate, it shall appear that the title or boundaries are in dispute, the justice shall certify the cause and transmit the papers to the district court of the same county. Causes so certified from justices of the peace, shall be proceeded with in the courts to which they have been certified, in all respects as if originally begun in the court to which they have been certified as aforesaid.

Certiorari to district or county court.

1601. SEC. 5. Judgments rendered in actions before justices of the peace may be removed by writs of *certiorari*, to either the county or district courts of the same county in such cases as writs of *certiorari* now are or may hereafter be allowed by law.

Repeal.

1602. SEC. 6. All acts or part of acts inconsistent with this act are hereby repealed.

Approved, March 14, 1877.

CHAPTER LVI.

LANDMARKS.

AN ACT TO PROTECT LANDMARKS.

[Session Laws, 1876.]

1603. SECTION 1. That if any person or persons shall wilfully and maliciously deface, remove, pull down, injure or destroy any location stake, side-post, corner-post, landmark or monument, or any other legal land boundary monument in this state, designating, or intending to designate the location, boundary or name of any mining claim, lode or vein of mineral, or the name of the discoverer, or date of discovery thereof; the person or persons so offending shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not more than one thousand dollars, or imprisoned not more than one year, at the discretion of the court; *provided*, that this act shall not apply to abandoned property.

Punishment for malicious defacement, removal, destruction, etc., of location stake or other landmark.

CHAPTER LVII.

LIBRARY.

[Revised Statutes, Chapter LII.]

1604. SECTION 1. The state superintendent of public instruction shall be *ex-officio* librarian for the state. The state library shall be kept in the rooms provided by the state for the same. It shall be the duty of the librarian to keep said rooms open from the hour of ten o'clock a. m. until twelve o'clock m., and from two o'clock p. m. until four o'clock p. m., on each day throughout the year, Sunday and holidays excepted.

Where to be kept and when to be kept open.

1605. SEC. 2. The librarian shall have the charge and custody of all books, maps, papers, charts, engravings, paintings, and all other things properly belonging to the library, or directed to be deposited therein; and shall also keep a regular file of all newspapers published in the state, which shall be donated thereto.

Charge and custody of books, maps, papers, etc.;

Books and documents from other states.

1606. SEC. 3. It shall be the duty of the librarian to receive and transfer all books or documents sent by other states or territories to the state library from the post office or other depot to which they may have been consigned, and to properly label and arrange them in the library.

Acknowledgment of receipt of books, etc.; record and report.

1607. SEC. 4. The state librarian shall cause the receipt of each book, map or other document that may come into his possession to be acknowledged; and he shall keep a record of all books and documents so received, and report the same as provided by law.

Powers of librarian

1608. SEC. 5. The librarian shall have full power to make any rules and regulations proper and necessary for the preservation and increase of the library not inconsistent with the law, which the librarian shall in all things observe; and to superintend and direct all expenditures of appropriations made for the library.

Sale of supreme court reports, etc.

1609. SEC. 6. The librarian shall control the sale of the reports of the supreme court and extra copies of statutes and other documents not otherwise appropriated, or advisable to be preserved and kept in the library.

Exchange with legislative bodies

1610. SEC. 7. The librarian is hereby directed to exchange statutes, journals, legislative documents and other books with other legislative bodies and libraries, as he shall deem proper.

Who to have free access to library; under what regulations books may be taken out.

1611. SEC. 8. All persons shall be permitted to visit the library and examine and read the books therein, and may take out any book and retain the same for three weeks by depositing a sum of money equal to double the value of the book with the librarian, which sum shall be returned to the owner on the return of the book. Members and ex-members of the legislative assembly, judges of the supreme court, district and county courts, officers of the state and their clerks, actually engaged in the service of the state, and clerks and sergeants-at-arms of the legislative assembly shall have free access to the use of the books of the library, and have the liberty of taking the same out under such regulations as the librarian may determine; but no public officer or other person having the right to take books out of the library shall have the authority to give any other person an order to take books out of the same; and if any

person having such right shall give such order, or otherwise obtain books from the same, to be used by any other person not having the right, such person shall thereupon forfeit all right to take books therefrom.

Report of librarian to general assembly.

1612. SEC. 9. The state librarian shall, on the first day of each regular session of the general assembly, make a full and complete report of all receipts and expenditures, and of the condition of the library, and all other matters in relation thereto, for the information of the general assembly.

Deposits of mineral and geological specimens.

1613. SEC. 10. It shall be the duty of the state librarian to issue a printed circular to the citizens of the state, inviting them to deposit in the state cabinet such minerals and geological specimens as any citizen may find upon his premises, or in any portion of the state.

Labeling and classification of specimens.

1614. SEC. 11. Whenever any such specimens may be deposited in the cabinet, it shall be the duty of the librarian to correctly label and classify each specimen, and to enter in a book kept for that purpose the name of the donor, and the character and quality of each specimen donated.

Kind of specimens desired, to be specified.

1615. SEC. 12. The circular of the librarian shall specify the kind and quality of the specimens desired, both in geology, mineralogy and fossils.

Cabinet to be open for inspection.

1616. SEC. 13. The cabinet so collected shall be open for the inspection of all persons, subject to the rules and regulations of the librarian, for the proper preservation of such specimens during the hours, as provided for the state library.

Bond of librarian; amount and conditions.

1617. SEC. 14. The state librarian, before he enters upon the discharge of his official duties, shall give a bond, with good and sufficient security, to be approved by the governor, made payable to the state of Colorado, conditioned that he shall faithfully discharge the duties of librarian, and deliver over to his successor in office all books and other property belonging to the state library, according to law, and such rules and regulations as may be adopted by the general assembly.

CHAPTER LVIII.

LICENSES.

[Revised Statutes, Chapter LIII.]

Licenses of auctioneers, peddlers, etc.

1618. SECTION 1. No auctioneer, peddler or other person or persons, company or corporation, shall be permitted to sell, vend, or retail, either at private sale or public auction, any goods, wares, or merchandise, without first having obtained a license for that purpose, as hereinafter provided. *Provided, however,* that this section shall not extend to any person selling produce, provisions, or mining tools.

Granting of license and payment thereof. (Amendment 1870.)

1619. SEC. 2. The county commissioners of the respective counties in this state, shall have power to grant such licenses on the payment into the county treasury, by the applicant for such license, of a sum, to be assessed by said commissioners, not less than five, nor more than one hundred dollars. *Provided,* that this section shall not apply to the county of Summit, except so far as the same may be made to apply to the sale, either by wholesale or retail, of spirituous or vinous liquors within said county.

Term of license.

1620. SEC. 3. Such license shall authorize the person receiving it, to vend, sell and retail, goods, wares and merchandise, within said county, for the space of one year from the time of granting the same.

Granting of permission by county clerk when commissioners not in session.

1621. SEC. 4. If the board of county commissioners shall not be in session when the application is made, the clerk of the county may grant a written permission to the applicant, to vend, sell and retail goods, wares and merchandise, until the end of the next session of the board of county commissioners; or, if said board take no action upon the case, for the term provided in the third section of this chapter. At the time of granting such license, the clerk may assess the amount to be paid by the applicant; which shall be paid into the county treasury accordingly.

Examination and approval of permit granted by clerk, by county commissioners.

1622. SEC. 5. When a permission shall be granted by the clerk, in vacation, as aforesaid, it shall be the duty of the board of county commissioners, at their next meeting thereafter, to examine such permit, and if approved, to proceed forthwith to assess the amount to be paid for

licenses, to be paid as in the case of original applications. But if the board of commissioners do not approve the same, the license shall be vacated, and no other sum shall be required to be paid than fixed by the clerk.

Penalty for keeping store or selling goods, etc., without license.

1623. SEC. 6. If any person or persons, company or corporation, shall, directly or indirectly, keep a store, or sell, vend, or retail any goods, wares or merchandise, without being first duly authorized by license or permit, as aforesaid, such person or persons, company or corporation, so offending, shall forfeit and pay any sum not exceeding one hundred dollars, nor less than ten dollars.

Who exempt from provisions of preceding section.

1624. SEC. 7. The preceding section shall not be construed to extend to the sale of goods, wares, or merchandise by merchants who pay an annual tax upon merchandise, assessed according to the revenue laws of this state, nor to persons who sell commodities manufactured or raised by themselves in this state.

Granting of license to saloons, hotels, etc; applicant to give bond.

1625. SEC. 8. The board of county-commissioners may grant licenses to keep saloons, hotels, public houses, or groceries, upon the following conditions, to wit:

First—The applicant shall pay into the county treasury, for the privilege granted, a sum not exceeding three hundred dollars, nor less than twenty-five dollars, in the discretion of the board.

Second—The applicant shall execute bond in the penalty of five hundred dollars, with one or more securities, to be approved by the board, conditioned that the applicant will keep an orderly house, and that he will not permit any unlawful gaming, or riotous conduct in his house.

Granting or rejection of application at discretion.

1626. SEC. 9. Upon application for licenses to keep saloons or groceries, the board may reject or grant the same, in their discretion.

Revocation of license.

1627. SEC. 10. The board of county commissioners shall have power, upon complaint being made to them, to revoke any license granted to keep a saloon or grocery, whenever they may be satisfied that the privileges granted have been abused, or that the person to whom the license was granted has violated the law.

1628. SEC. 11. Licenses granted to keep saloons or groceries, shall not authorize the persons obtaining the

Place of sale to be designated in license; more than one place not authorized; licenses for sale of spirituous or vinous liquors in towns and cities.

license to vend or sell spirituous or vinous liquors in more than one place or house; and every license shall describe the house and place intended to be occupied. The board of trustees, or common council, of every incorporated town or city, shall have exclusive authority to license saloons, groceries, and all places wherein spirituous, vinous, malt, or other intoxicating liquors are sold by quantities less than one quart.

Saloon or grocery defined.

1629. SEC. 12. A saloon or grocery shall be deemed to include all places where spirituous or vinous liquors are sold by quantities less than one quart.

Penalty for selling or otherwise disposing of spirituous or vinous liquors in less quantities than one quart.

1630. SEC. 13. Every person not having a legal license to keep a saloon or grocery, who shall barter, sell, exchange, or otherwise dispose of for his gain or benefit, any vinous, spirituous, or mixed liquors, in less quantities than one quart, or shall permit the same to be done on his or her premises, for his or her benefit or gain, shall forfeit and pay the sum of twenty dollars for each offense, together with costs of suit; one-half to any person who shall give information, the other half to be paid into the county treasury.

Penalty for selling, exchanging or delivering liquors to Indians.

1631. SEC. 14. No retailer of spirituous liquors, or other person or persons, shall sell, exchange, or otherwise deliver, to any Indian or Indians, within the boundaries of this state, any spirituous liquors, under the penalty of fifty dollars for every such offense; the one-half thereof for the use of the county wherein the offense is committed, and the other half for the person informing.

Suppression of license for permitting disorder, drunkenness or unlawful games.

1632. SEC. 15. Every person licensed to keep a saloon or grocery, who shall knowingly suffer any disorder, drunkenness or unlawful games, whatsoever, in his, her or their house, his, her or their license or licenses shall be suppressed by the board of county commissioners.

Agents of foreign insurance companies; how authorized to do business in this state.

1633. SEC. 16. All agents of foreign insurance companies shall, upon their acceptance of such agencies, signify the same in writing, to the clerk of their respective counties; which notice shall be filed by the clerk in his office; which shall entitle the agent to grant policies of insurance, according to the laws governing the company of such agency.

Penalty for transacting business without license, when license required by law.

1634. SEC. 17. If any person carry on or transact any business or occupation without license therefor, when such license is required by any law of this state, he shall, on conviction thereof, be fined in a sum not exceeding three hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Theatres, circuses and shows included; penalty for opening such places on Sabbath day.

1635. SEC. 18. This chapter shall extend to and include all theatres, circuses, and shows, where an admission fee is charged for entrance thereto. No person shall be allowed by virtue of any such license to open any place of public amusement, such as a theatre, circus, or show, on the Sabbath or Lord's day; but any person who shall so offend on such day, shall be fined in a sum not less than fifty, nor more than one hundred dollars, for every such offense.

Payment into county treasury of fines and penalties hereby imposed.

1636. SEC. 19. Every magistrate, or other officer, to whom any fines or penalties, imposed by this chapter, shall be paid for the use of the county, shall, at the next meeting of the board of county commissioners, make a report of the amount thereof, and pay the same into the county treasury.

Informers competent witnesses.

1637. SEC. 20. Persons prosecuting or giving information, under the provisions of this chapter, may be competent witnesses on the trial, notwithstanding their interest in the penalty to be recovered.

Penalties; how recovered, and disposition of.

1638. SEC. 21. Penalties incurred by a violation of the provisions of this chapter, may be recovered by action of debt, or by indictment in the name of the people of the state of Colorado, for the use of the proper county, before any justice of the peace or court of competent jurisdiction of the proper county, upon complaint of any citizen of such county; and any justice of the peace or other officer, into whose hands such penalty shall properly come, shall, unless otherwise required by law, make report of such recovery to the board of county commissioners; and at the next regular meeting succeeding, the collector of such penalty shall pay into the county treasury the part thereof which shall be payable to such county, and the remainder to the person informing or prosecuting.

Appeals allowed

1639. SEC. 22. Appeals, and writs of *certiorari*, may be taken from proceedings had under the provisions of this chapter, as in other cases.

CHAPTER LIX.

LIENS.

[Revised Statutes, Chapter LIV.]

LIENS UPON PERSONAL PROPERTY.

Retention of possession of stock authorized until payment is made of amount due for feeding, herding, etc.

1640. SECTION 1. Any ranchman, farmer, agistor or herder of cattle, tavern-keeper or livery-stable keeper, to whom any horses, mules, asses, cattle or sheep, shall be intrusted, for the purpose of feeding, herding, pasturing or ranching, shall have a lien upon said horses, mules, asses, cattle or sheep, for the amount that may be due for such feeding, herding, pasturing or ranching, and shall be authorized to retain possession of such horses, mules, asses, cattle or sheep, until the said amount is paid; and every hotel, tavern and boarding-house keeper shall have a lien upon the baggage of his or her patrons, boarders and guests, for the amount that may be due from such patrons, boarders and guests, for boarding and lodging, or either, and they are hereby authorized to hold and retain possession of such baggage until the amount so due for board and lodging, or either, is paid. *Provided*, that the provisions of this section shall not be construed to apply to stolen stock.

Retention of possession of baggage until amount due for board and lodging is paid. (Amendment 1876.)

Lien of common carrier upon personal property for charges for transportation, storage, etc

1641. SEC. 2. Every common carrier of goods or passengers who shall, at the request of the owner of any personal goods, carry, convey or transport the same from one place to another; and any warehouseman or other person who shall safely keep or store any personal property, at the request of the owner, or person lawfully in possession thereof, shall, in like manner, have a lien upon all such personal property, for his reasonable charges for the transportation, storage or keeping thereof, and for all reasonable and proper advances made thereon by him, in accordance with the usage and custom of common carriers and warehousemen.

Lien of mechanic or other person upon personal property for labor and materials for the improvement thereof.

1642. SEC. 3. Any mechanic or other person who shall make, alter, repair or bestow labor upon, any article of personal property, for the improvement thereof, at the request of the owner of such personal property, or of the materials from which the same is made, shall, in like manner, have a lien upon all such articles of personal property, for his reasonable charges for the labor performed and materials furnished and used in such making, alteration, repair or improvement.

Proceedings in case charges be not paid within ninety days; appointment of appraisers.

1643. SEC. 4. If any such charges for which a lien is given by the three preceding sections, be not paid within ninety days after the same become due and payable, the mechanic, inn-keeper, agistor, or other person to whom such lien is given, as aforesaid, may apply to any justice of the peace of the county wherein he resides, to appoint appraisers to appraise the several articles of personal property whereon such lien is claimed. Such justice shall thereupon appoint, by warrant under his hand and seal, three reputable householders of the county, not interested in the matter, to appraise such personal property.

Oath of appraisers and return of appraisement.

1644. SEC. 5. The appraisers so appointed shall be sworn by the justice, to well and faithfully appraise and value all such personal property, and shall thereupon proceed to view and appraise the same, and shall return their appraisement, wherein shall be set down each article separately, to the justice by whom they were appointed, within ten days after their appointment.

How sale of appraised property to be made, and disposition of proceeds thereof.

1645. SEC. 6. After such appraisement is made, the person to whom such lien is given by the foregoing sections, may, after giving ten days' prior notice of the time, place and terms of such sale, with a description of the property to be sold, by publication in some newspaper published in the county wherein he resides, (or if there be no such newspaper, then by posting in three public places within such county,) and delivering to the owner of such personal property, or if he do not reside in the county, transmitting by mail to him at his usual place of abode, if known, a copy of such notice, proceed to sell all such personal property, or so much thereof as may be necessary, at public auction, for cash in hand, at any public place within

such county, between the hours of ten a. m. and four p. m. of the day appointed; and from the proceeds thereof, may pay the reasonable costs of such appraisement, notice and sale, and his reasonable charges for which he hath his lien. The residue of the proceeds of such property unsold, he shall render unto the owner.

Sales made for less than two thirds of appraised valuation, void.

1646. SEC. 7. No such sale shall be made for less than two-thirds of the appraised value of the article sold, nor except upon due notice, as required by the preceding section; every such sale made in violation of the provisions of this section, shall be absolutely void.

Person to whom lien is given, may purchase.

1647. SEC. 8. At any such sale, the person to whom such lien is given, may become the purchaser.

Continuance of sale from day to day. Account of sales to be filed with justice

1648. SEC. 9. In any case where the property to be sold cannot conveniently be sold in one day, the sale may be continued from day to day, by public outcry at the place of sale. Upon the completion of such sale, the person to whom the lien is given hereby, shall cause a sale-bill thereof to be filed with the justice of the peace, before whom the appraisement was had, in which shall be set down the sum for which each separate article of property was sold, and the name of the purchaser. The justice shall record such sale-bill in his docket, and preserve the original thereof, together with the appraisement.

Right of action of party to whom lien is given, after sale.

1649. SEC. 10. Nothing herein contained shall be so construed as to take away the right of action of the party to whom such lien is given, for his charges, or for any residue thereof, after sale of such property.

Appointment of clerk and crier of sale.

1650. SEC. 11. At any such sale, the person to whom such lien is given, as herein provided, may appoint a clerk and crier.

Fees of appraisers, justices, clerks and criers.

1651. SEC. 12. Appraisers appointed under the provisions of this chapter, shall receive three dollars per day; justices of the peace shall receive per each warrant of appraisement, one dollar; for receiving and recording each appraisement, twenty cents per one hundred words, and the like fees for recording each sale-bill; clerks and criers at sales made under the provisions hereof, shall receive each three dollars per day.

AN ACT TO SECURE LIENS TO MECHANICS AND OTHERS, AND TO REPEAL ALL OTHER ACTS IN RELATION THERETO.

[Session Laws, 1872.]

1652. SECTION 1. All artisans, mechanics and others who shall perform work or labor, or furnish materials to the amount of twenty-five dollars or more, for the construction or repairing of any building or other superstructure, shall have and may claim and hold a lien upon such building or superstructure for the amount and value of the work and labor so performed or materials furnished, by each respectively; *provided*, such repairing shall be by the authority of agent or owner of such building or superstructure.

Who may claim and hold lien upon building or superstructure.

1653. SEC. 2. Any person claiming a lien as provided in section one of this act, and wishing to avail himself of the benefits thereof, shall file in the clerk and recorder's office of the county in which such building or superstructure is situated, within forty days after such building or superstructure, work of construction, or any repairs shall have been completed, a statement containing,

Proceedings necessary to hold lien. Making, filing and recording of statement; in what manner statement to be served upon owner.

First—A notice of intention to hold and claim a lien.

Second—A description of the property to be charged therewith.

Third—An abstract of indebtedness showing the whole amount of debit, the whole amount of credit, and the balance due the claimant, which abstract of indebtedness shall be verified by the claimant, or by some other person in his behalf. And it shall be the duty of the county clerk and recorder to file and record such statement in a separate book provided for that purpose, and from the time of such filing all persons shall be deemed to have notice thereof. And, *provided*, that when such lien is claimed by a subcontractor, journeyman, or any other person than a contractor performing work or labor, or furnishing materials, the statement aforesaid shall be filed within twenty days after the time when the last work or labor was performed, or the last materials furnished by him. And within ten days after the filing of the statement aforesaid, he shall serve a copy thereof on the owner or owners of such buildings or superstructure, or the agent of such owner or owners by deliver-

ing the same personally, or by posting the same in a conspicuous place on the building to be charged with said lien.

Lien upon railroad, tramway, toll-road, canal, ditch, etc., for labor performed or materials furnished for construction or repairing; when statement to be filed.

1654. SEC. 3. All mechanics, laborers and others who shall perform work or labor or furnish materials to the amount of twenty-five dollars, or more, for the construction or repairing of any railroad, tramway, toll-road, canal, water-ditch, flume, aqueduct or reservoir, shall have, and may each respectively claim and hold a lien upon such railroad, tramway, toll-road, canal, water-ditch, flume, aqueduct or reservoir, for the amount and value of the work or labor so performed, or material furnished, by filing in the county clerk and recorder's office of the county in which the property to be charged with such lien is situated, within forty days after such railroad, tramway, toll-road, canal, water-ditch, flume, aqueduct or reservoir or repairs shall have completed, a statement as required by section two of this act, or if such lien is claimed by a sub-contractor, journeyman or any other person than a contractor performing work or labor, or furnishing materials, then by filing such statement within twenty days after the time when the last work or labor was performed, or the last materials were furnished by him, and by serving a copy of such statement upon the owner or owners of such property, or the agents of such owner or owners within the time and in the manner, except as to posting, provided in said section. And in case personal service cannot be had, service may be made by depositing a copy of said statement, postage paid, in the postoffice, directed to such owner or owners or such agent, at his or their last known place of residence. And any lien so claimed shall extend to and include all franchises, charter privileges, and rights of way that may in anywise pertain to any such railroad, tramway, toll-road, canal, water-ditch, flume, aqueduct or reservoir.

If lien claimed by person other than contractor, how statement to be filed and served.

Extent of lien.

Lien upon mine, lode or deposit, etc., for labor, timber or materials; when statement to be filed.

1655. SEC. 4. All miners, laborers and others who work or labor, to the amount of twenty-five dollars or more, in or upon any mine, lode or deposit yielding metals or minerals of any kind, or upon any shaft, tunnel, adit, or other excavation, designed or used for the purpose of draining or working any such mine, lode or deposit, and all persons who shall furnish any timber or other ma-

terials to the amount of twenty-five dollars or more, to be used in or about any such mine, lode or deposit, shall have and may each respectively claim and hold a lien upon such mine, lode or deposit for the amount and value of the work or labor so performed, or materials furnished, by filing in the county clerk and recorder's office of the county in which such mine, lode or deposit is situated, within forty days after the time when the last work or labor was performed, or the last materials were furnished by him, a statement as required by section two of this act. Or if such lien is claimed by a sub-contractor, or any other person than a contractor performing work or labor, or furnishing materials, then by filing such statement within twenty days after the time when the last work or labor was performed, or the last materials furnished by him, and serving a copy of such statement upon the owner or owners of such mine, lode or deposit, or his or their agent, within the time and in the manner provided in section three of this act. *And, provided,* that when two or more such lodes or deposits, owned or claimed by the same person or persons shall be worked through a common shaft, tunnel, incline or adit, then all the lodes or deposits so worked, shall for the purposes of this act, be deemed one mine; and, *provided further,* that this section shall not be deemed applicable to the owner or owners of any mine, lode, deposit, shaft or adit, where the same shall be worked by a lessee or lessees.

If lien claimed by person other than contractor, how statement to be filed and served.

More than one mine worked through common shaft deemed as one mine.

Not applicable to mines worked by lessees.

1656. SEC. 5. All laborers and other persons who shall perform work or labor to the amount of twenty-five dollars or more, upon any building lot or lots, in any city, town or village, or for the purpose of improving such lot or lots, for the amount and value of the work and labor so performed, by filing in the county clerk and recorder's office of the county in which such lot or lots are situated, within forty days after the time when the last work or labor was performed by him, a statement as required by section two of this act. Or if such lien is claimed by a sub-contractor or any other person than a contractor performing work or labor, then by filing such statement within twenty days after the time when such work or labor was performed by

Lien upon building lots, for value of work performed; when statement to be filed.

If lien is claimed by person other than contractor.

him, and by serving a copy of such statement upon the owner or owners of such lot or lots, within the time and in the manner provided in said section.

Sub-contractors and others shall have valid lien.

1657. SEC. 6. Every sub-contractor, journeyman, laborer or other person performing work or labor, or furnishing material, shall, under the provisions of this act, have a valid lien upon the building or superstructure, or other property upon which a lien may be claimed, as hereinbefore provided, and upon which such work or labor was performed, or for which such materials were furnished, and if any money be due, or is to become due under the contract from the owner or owners to such contractor, upon being served with a copy of the statement, as provided in section two of this act, by a sub-contractor, journeyman or such laborer as aforesaid, owner or owners, may withhold out of any moneys due or to become due under the contract, a sufficient amount to satisfy the lien claimed by such sub-contractor, journeyman or laborer, or other person performing work or labor, or furnishing materials, until the validity thereof be established by proper legal proceedings, if the same be contested; and if so established, the amount thereof shall be a valid set-off to that extent in favor of such owner or owners, and against the contractor. And after such copy of the statement shall have been properly served upon such owner or owners in case of a failure to comply with the provisions of this section, then such sub-contractor, journeyman or laborer, or party furnishing materials, may sue and recover from such owner or owners the amount of any damages he may have sustained by reason of such failure. No payment of money made by such owners or owner to such contractor for the purpose of avoiding any anticipated lien of a sub-contractor, journeyman or laborer, or person furnishing materials, shall be valid, and if any person shall file a notice or statement, or claim a lien for a larger sum than is due to him, with intent to cheat or defraud any other person, and that fact shall appear in any proceeding provided for in the act to which this is amendatory, such person shall forfeit all or any claim he may be entitled to under this act, and the act to which this is amendatory. No attachment served upon any money due

Withholding of moneys due contractor from owner, until validity of lien be established; to be valid set-off in favor of owner as against contractor if lien established.

Suit and recovery of damages against owner for failure to comply with provisions of this section.

(Amendment 1876. Payment of money made to avoid lien, and claiming lien for larger sum than is due, with fraudulent intent

a contractor from the owner or owners of any building, or superstructure, or other property upon which a lien has been claimed by a sub-contractor, journeyman, laborer or parties furnishing materials, shall be valid until such lien shall have been satisfied or adversely determined or barred by limitation.

Invalidity of attachment served on money due contractor from owner.

1658. SEC. 7. The land occupied by any building or superstructure, railroad, tramway, toll-road, canal, water-ditch, flume, aqueduct or reservoir, building lot or lots, mine, lode or deposits, as may be necessary for the convenient use and occupation of the same, shall be subject to the liens hereinbefore provided for, if at the time the work or labor was commenced, or the first materials were furnished, such land was owned by, or was in the possession of, under a *bona fide* claim of title, the person or persons for whom, or at whose instance, such work or labor was performed, or materials were furnished; but if such person hold less than a fee simple estate in such land, then only his or their interest therein shall be subject to such lien. And all liens herein provided for shall be preferred to every other lien or incumbrance which shall attach upon any property made subject thereto subsequent to the time when the work or labor was commenced, or the first of the materials furnished, and also to all mortgages and other encumbrances unrecorded at the time such work or labor was commenced, or the first of the materials were furnished; but nothing herein contained shall be construed as impairing any valid encumbrance upon any such land duly made and recorded before such work or labor was commenced, or the first of such materials were furnished.

In what cases lands occupied by buildings, railroads, etc., or interest therein, shall be subject to liens.

Preference of liens herein provided for over other liens.

1659. SEC. 8. No lien claimed as hereinbefore provided, shall continue or bind any building or superstructure or other property made subject thereto by the provisions of this act, for a longer period than six months from the time of filing the same, unless an action be commenced in some court of competent jurisdiction within that time to enforce the same, nor shall any such lien be continued for a longer period, by any agreement, to give credit thereon.

Liens not to continue or bind property unless action for enforcement be commenced within six months.

1660. SEC. 9. Said liens may be enforced by an action in any court of competent jurisdiction, by filing a petition

Manner of enforcement of liens.

which shall set out the particulars of the demand, with a description of the premises sought to be charged with the lien, and at the time of filing the bill, and issuing the summons, to be served and returned in like time and manner as suits in chancery. The plaintiff shall cause a notice to be published at least once a week for three consecutive weeks, in some newspaper published in the county, if there be one, and if not, then by posting the same in the three most public places in the county, notifying all persons holding or claiming liens under the provisions of this act on said premises, to be and appear in said court on a day specified therein, and during a regular term of such court, and to exhibit then and there the proofs of their said liens. On the day appointed the court shall proceed to hear and determine said claims in a summary way, or may refer the same to a referee to ascertain and report upon said liens and the amount justly due thereon. Judgments shall be rendered according to the rights of the parties, and all liens not so exhibited and proved, shall be deemed to be waived in favor of those which are so exhibited. On acertaining the whole amount of said liens with which the said premises are justly chargeable, as hereinbefore provided, the court shall cause said premises to be sold in satisfaction of said liens and costs of suit, and any party in whose favor such judgment may be rendered, may cause the premises to be sold within the time and in the manner provided for sales on executions issued out of any court of record. And if the proceeds of such sale, after the payment of costs, shall not be sufficient to satisfy the whole amount of such liens included in the decree of sale, then such proceeds shall be apportioned according to the rights of the several parties. In case the proceeds of sale amount to more than the sum of said liens, and the costs of sale, then the remainder shall be paid over to the owner of said property, and each party whose claim is not satisfied in the manner hereinbefore provided, shall have execution for the balance unsatisfied.

Publication of notice.

How judgment to be rendered.

Sale of property and disposition of proceeds thereof

1661. SEC. 10. Nothing herein contained shall be construed to take away or affect in any manner any right of action which such contractor, sub-contractor, journeyman,

or other person who shall have performed work or labor, or furnished materials for any such building or superstructure, or other property made subject to a lien as herein provided, would otherwise have against the person or persons for whom such work or labor was performed, or materials were furnished.

Right of action of sub contractor or other persons against person for whom labor was performed or materials furnished, not to be affected.

1662. SEC. 11. The claimant of any of such lien, filed as aforesaid, on the payment of the amount thereof, together with the cost of filing and recording such liens, and the acknowledgment of satisfaction, shall, at the request of any person interested in the property charged therewith, enter or cause to be entered an acknowledgment of satisfaction of the same of record within ten days after such request, and on failure to enter such satisfaction within that time, the claimant shall forfeit and pay to the person requesting the satisfaction, the sum of twenty dollars per day until the same shall be entered, to be recovered in the same manner as other debts.

Acknowledgment of satisfaction of lien; forfeiture in case of failure to have same entered of record

1663. SEC. 12. Two or more creditors of the same class may assign their claims, duly verified, to any other creditor of the same class. Assignee of such claims may claim and hold his lien as provided in this act.

Assignment of claims and rights of assigns.

AN ACT TO AMEND AN ACT, ENTITLED "AN ACT TO SECURE LIENS TO MECHANICS AND OTHERS, AND TO REPEAL ALL OTHER ACTS IN RELATION THERETO." APPROVED, FEBRUARY 9, A. D. 1872.

[Session Laws, 1876.]

1664. SECTION 1. A sub-contractor, journeyman, laborer, or other person entitled to a lien under the provisions of the act to which this is amendatory, who intends to furnish any materials or perform any labor for which such lien is given, may, at his option, give a notice in writing to the owner or owners of any property for which such materials may be furnished, or upon which such labor may be performed, of his intention to claim such lien, stating the probable value of the materials to be furnished, or the probable value of such labor to be performed, as near as may be, with a description of the property to be affected thereby; and this notice may be given before he begins to

Lien for labor performed or materials furnished to commence from date of record of notice which may be given to owner either before or after performance of labor or furnishing materials.

furnish such materials, or before he begins to perform such labor; and, at his option, he may give such notice at any time after he begins to furnish such material, or to perform labor, and before the completion of his undertaking to furnish materials, or before the completion of his work; and from the time he shall have given such notice, and had the same recorded, as hereinafter prescribed, he shall have from the date of its record a lien for such materials thereafter furnished, or such labor thereafter performed by him, not exceeding the sum stated in such notice, and due to him, and every such notice shall have endorsed upon it the affidavit of the person giving such notice, that he claims such lien in good faith.

Filing of statement not dispensed with, nor the giving of notice not obligatory.

1665. SEC. 2. Nothing in this act shall be so construed as to dispense with the filing of the statement by sub-contractors, journeymen, laborers, and other persons claiming liens, in the time, manner, and form required in the second, third, fourth and fifth sections of the act to which this is amendatory; nor shall anything in this act be so construed as to compel such sub-contractors, journeymen, laborers, or other persons claiming liens to give the notice to the owner or owners of property aforesaid allowed by the first section of this act; but such persons may, at their option, proceed to secure a lien under the act to which this is amendatory.

Notices given, to be recorded.

1666. SEC. 3. A copy of all such notices as are required by the first section of this act shall be recorded in the office of the recorder of the county where the property set forth therein is situated, as statements are required to be recorded by the second section of the act to which this act is amendatory, and shall have the same effect from the date of their record, as the filing of the statements required by the second section of the act to which this act is amendatory.

In what manner service of notice may be made.

1667. SEC. 4. If the owner or owners of the property upon whom notices are required by this act to be served by sub-contractors, journeymen, laborers and other persons claiming liens, are non-residents of this state, or cannot be found in the county where the property sought to be subjected to a lien is situated, then such notices may be served

upon an agent superintending the work on such property for such owner or owners in such county; and, if there be no such agent in such county, then such notice shall be posted up in some conspicuous place on said property, and proof of the service of any notice shall be made by the person serving or posting the same, making affidavit upon a copy thereof; but this mode of proof shall not affect the notice required to be published in a newspaper, as in the next following section.

Who shall be made defendants in action to enforce lien.

1668. SEC. 5. In a proceeding by sub-contractors and all other persons, under section nine of the act to which this is amendatory, to enforce a lien against any property whatever, the owner or owners thereof, the contractor or contractors for any building, superstructure, work or labor thereon, and all persons interested in the same, shall be made parties defendant; and the plaintiff shall cause the notice to be published, as required in said section, against all persons holding or claiming liens on the property, which said notice shall be directed to such persons generally, giving therein a description of the property against which the lien is claimed.

Liens in excess of amount due contractor from owner not to be given sub-contractor, etc.

1669. SEC. 6. Nothing in this act, nor in the act to which this is amendatory, shall be so construed as to give a lien or liens to any sub-contractor, journeyman, laborer, or other person which singly exceeds, or in the aggregate exceeds the amount due or to become due to the contractor from the owner of the property, upon the contract between them, for the work of such contractor upon such property.

Penalty for failure to enter satisfaction of claim or withdrawal of notice in case of failure to furnish materials or perform labor, or payment therefor.

1670. SEC. 7. If, after the filing of a notice allowed by the first section of this act, the person filing the same shall not proceed to furnish materials or perform labor under the same and pursuant thereto, or shall be paid for such materials or labor, he shall immediately enter (as the case may require,) a withdrawal of said notice or satisfaction of his claim under it on the record thereof, to be attested by the recorder, and, if he shall fail to do so within five days after notice in writing given to him by the owner, or his agent, of the property affected, he shall forfeit and pay to the owner of such property for each such failure, the sum of

twenty dollars, and for a refusal to do so, the sum of fifty dollars the first refusal, and one hundred dollars for each subsequent refusal.

CHAPTER LX.

LIMITATIONS.

[Revised Statutes, Chapter LV.]

What actions shall be barred if not commenced within six years from accruing thereof.

1671. SECTION 1. The following actions shall be commenced within six years, next after the cause of action shall accrue, and not afterwards:

First—All actions of debt founded upon any contract or liability in action.

Second—All actions upon judgments rendered in any court not being a court of record.

Third—All actions for arrears of rent.

Fourth—All actions of *assumpsit*, or on the case founded on any contract or liability, express or implied.

Fifth—All actions for waste, and for trespass on land.

Sixth—All actions of replevin, and all other actions for taking, detaining or injuring goods or chattels.

Seventh—All other actions on the case, except actions for slanderous words, and for libels.

What actions barred if not commenced within one year.

1672. SEC. 2. All actions for assault and battery, and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within one year, next after the cause of action shall accrue, and not afterwards.

When actions for escapes to be commeuced.

1673. SEC. 3. All actions against sheriffs, or other officers for the escape of persons imprisoned on civil process, shall be commenced within six months from the time of such escape, and not afterwards.

Actions against sheriffs and coroners for official acts.

1674. SEC. 4. All actions against sheriffs and coroners, upon any liability incurred by them, by the doing of any act in their official capacity, or by the omission of any official duty, except for escapes, shall be brought within one year after the cause of action shall have accrued, and not after that period.

1675. SEC. 5. In all actions of debt or *assumpsit*, brought to recover the balance due upon a mutual and

open account current, the cause of action shall be deemed to have accrued at the time of the last item proved in in such account. When cause of action deemed to have accrued on open account.

1676. SEC. 6. All personal actions, on any account not limited by the foregoing sections, or by any other law, in this state, shall be brought within three years after the accruing of the cause of action, and not afterwards. What actions barred unless commenced within three years.

1677. SEC. 7. All the provisions of this chapter shall apply to the case of any debt or contract, alleged, by way of set-off, on the part of a defendant; and the time of limitation of such debt, shall be computed, in like manner as if an action had been commenced therefor, at the time when the plaintiff's action accrued. Set-off on part of defendant; how limitation computed.

1678. SEC. 8. All actions and suits, for any penalty or forfeiture of any penal statute brought by this state, or any person to whom the penalty or forfeiture is given, in whole in part, shall be commenced within one year next after the offence is committed, and not after that time. Actions for penalties and forfeitures to be commenced within one year

1679. SEC. 9. The preceding section shall not apply to any suit which is or shall be limited by any statute to be brought within a shorter time than is prescribed therein, but such suit shall be brought within the time that may be limited by such statute. In case of suits limited by statute.

1680. SEC. 10. Whenever there is a concurrent jurisdiction in the courts of common law and in courts of equity, of any cause of action, the provisions of this chapter limiting the time for the commencement of a suit for such cause of action in a court of common law, shall apply to all suits hereafter to be brought for the same cause in the court of chancery. Limitations to apply to courts of equity having concurrent jurisdiction with courts of law.

1681. SEC. 11. The last section shall not extend to suits over the subject matter of which a court of equity has peculiar and exclusive jurisdiction, and which subject matter is not cognizable in the courts of common law. Not to apply where courts of equity have exclusive jurisdiction.

1682. SEC. 12. Bills for relief, on the ground of fraud shall be filed within three years after the discovery by the aggrieved party, of the facts constituting such fraud, and not afterwards. Actions for relief on ground of fraud to be commenced within three years.

1683. SEC. 13. Bills of relief, in case of the existence, of a trust not cognizable by the courts of common law,

Bills for relief in other cases not herein provided for to be filed within five years

and in all other cases not herein provided for, shall be filed within five years after the cause thereof shall accrue, and not after.

Exemption from the two last sections of persons under disabilities.

1684. SEC. 14. If the person entitled to file any bill specified in the two last sections, be, at the time of discovering the facts constituting such fraud, or at time the cause for filling such bill shall accrue, under any of the disabilities enumerated in this chapter, the time during which such disabilities shall continue shall be excepted from the limitations contained in the two last sections, in the same manner and with like effect, as such time is herein excepted from the limitations prescribed for commencing actions at law; and in case of the death of the person so entitled, during such disability, or before the expiration of the time herein limited for filing such bills, the same may be filed by the heirs or representatives of such person, as the case may require, within the same time as is allowed in this chapter for commencing actions at law in the like cases.

What person under disability at time of accruing of cause of action may bring suit when disability removed.

1685. SEC. 15. If any person entitled to bring any of the actions before mentioned in this chapter, shall, at the time when the cause of action accrues, be within the age of twenty-one years, or a married woman, insane, imprisoned, or absent from the United States, such person may bring the said actions, within the time in this chapter respectively limited, after the disability shall be removed.

Limitation of actions accruing out of the state.

1686. SEC. 16. It shall be lawful for any person, against whom any action shall be commenced in any court of this state, where the cause of action accrued without the state, upon a contract or agreement, express or implied, more than two years before the commencement of the action, or upon any sealed instrument in writing, or judgment or decree of any court, more than three years before the commencement of the action, to plead the same, and give the same in bar of the plaintiff's right of action.

Commencement of actions by executor or administrator of deceased persons.

1687. SEC. 17. If any person entitled to bring any of the actions before-mentioned herein, shall die before the expiration of the time herein limited therefor, and if the cause of action does by law survive, the action may be commenced by the executor or administrator of the deceased person, as the case may be, at any time within one

year after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

1688. SEC. 18. If in any action duly commenced, within the time herein limited, and allowed therefor, the process shall fail of a sufficient service or return, by any unavoidable accident, or by any default or neglect of the officer to whom it was committed; or if the process shall be abated, or the actions otherwise avoided or defeated by the death of any party thereto, or for any matter of form; or if after a verdict for the plaintiff, the judgment shall be arrested; or if the judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein: and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

In case of abatement of action commenced within period of limitation; when new action may be brought.

1689. SEC. 19. If there are two or more joint contractors, or joint executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the provisions of this chapter, so as to be chargeable, by reason only, of an acknowledgment or promise made by any other or others of them.

Promises of one of several joint contractors, executors, etc.; not to bind the others so as to deprive them of the benefits of this chapter.

1690. SEC. 20. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial or otherwise, that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any others or other of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff, as to any of the defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

How judgment to be given in actions against joint contractors etc., where it shall appear that plaintiff is barred by this chapter as to one of them.

1691. SEC. 21. If in any action on contract, the defendant shall plead in abatement, that any other person ought to have been jointly sued, and issue be joined on that plea, and if it shall appear on the trial, that the action was by reason of the provisions of this chapter barred against

When issue to be found for plaintiff in case of plea of non-joinder of defendant.

the person so named in the plea, the said issue shall be found for the plaintiff.

Effect of payment by defendant not to be impaired; plaintiff's memorandum or indorsement not evidence of payment.

1692. SEC. 22. Nothing in the three preceding sections shall alter, take away, or lessen the effect of a payment of any principal or interest made by any person; but no indorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the provisions of this chapter.

In case of payments made to one or more of several joint-contractors, executors, etc.

1693. SEC. 23. If there are two or more joint contractors, or joint executors or administrators of any contractor, no one of them shall loose the benefit of the provisions of this chapter, so as to be chargeable, by reason only of any payment made by any other or others of them.

AN ACT LIMITING THE TIME FOR BRINGING ACTIONS RESPECTING REAL ESTATE.

[Session Laws, 1874.]

Persons entitled to benefits of this act.

1694. SECTION 1. That every person in the peaceable and undisputed possession of lands or tenements, including mining claims, under claim and color of title, made in good faith, including pre-emptions made in accordance with the laws of the state of Colorado, or any mining district wherein such property may be situate, who shall, for five successive years hereafter continue in such possession, and shall also, during said time, pay all taxes legally assessed on such lands, tenements or mining claims, shall be held and adjudged to be the legal owners of said lands, tenements or mining claims, to the extent and according to the purport of his or her proper title or pre-emption. All persons holding under such possession by purchase, devise or descent, before said five years shall have expired, and who shall continue such possession, and continue to pay the taxes as aforesaid, so as to complete the possession of and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section.

1695. SEC. 2. Whenever a person having color of title, either by pre-emption or otherwise, as aforesaid, made in good faith to vacant and unoccupied land or mining claims, shall pay all taxes legally assessed thereon, or for improvements situate thereon, for five successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied lands or mining claims, to the extent and according to the purport of his or her proper title or pre-emption. All persons holding under such taxpayer, by purchase, devise or descent, before said five years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of the taxes for the term aforesaid, shall be entitled to the benefit of this section: *Provided, however,* that if any person having a better paper title or pre-emption to said vacant and unoccupied lands or mining claims, shall during the said term of five years, pay the taxes assessed on said lands or mining claims, or improvements thereon, for any one or more years of the said term of five years, then, in that case, such taxpayer, his heirs and assigns, shall not be entitled to the benefit of this section. Persons not entitled to benefits of this act.

1696. SEC. 3. The two preceding sections shall not apply to lands or tenements owned by the United States, except as to the possessory rights of parties claiming to hold such lands or mining claims under and in accordance with the laws of the United States, the laws of this state, and the mining laws, regulations and customs of the several mining districts wherein such land or mining claims may be situate, nor to land held for the use of any school or seminary, or for the use of any religious society, nor to lands held for any public purpose Nor shall they extend to any lands, tenements or mining claims, when there shall be color of title by purchase or pre-emption in another to such lands, tenements or mining claims, and the holder of such title is under the age of twenty-one years, insane or imprisoned; *provided,* such person shall commence an action to recover such lands or mining claims so claimed as aforesaid, within one year after such disability shall cease to exist, and shall prosecute such action to judgment; and in case of vacant and unoccupied land shall, also within Property to which provisions of this act shall not extend.

one year pay to the person or persons who paid the same, or to the treasurer of the county wherein the land is situate, for the use of such person or persons, all the taxes paid by such person or persons on said land or improvements, with interest thereon from the date of such payments at the rate of twenty-five per cent. per annum. Nor shall said section extend to or apply to any mining claims, the title of which may be derived from pre-emption under and by virtue of the provisions of the law of the United States, approved, May 10, 1872, in reference to the forfeiture of mining claims by failure to improve the same.

What defendant may plead in bar of actions to recover possession of lands, except in action of ejectment.

1697. SEC. 4. In all cases at law or in equity brought to recover the possession of any lands, tenements or mining claims, except in actions of ejectment, the party defendant may plead such possession, payment of taxes as aforesaid, in bar of such action, and on failure to plead such possession and payment of taxes, the right of the said defendant to avail himself of the benefit of said statute shall be deemed waived by the said defendant.

CHAPTER LXI.

LUNATICS.

[Revised Statutes, Chapter LVI.]

Summoning of jury on inquisition of lunacy; appointment of conservator.

1698. SECTION 1. Whenever any lunatic has any estate, real or personal, the county court of the county wherein such lunatic resides, shall, on the application in writing of any reputable citizen of said county, order a jury to be summoned to ascertain whether such person be lunatic, insane or distracted; and if such jury return in their verdict, that such person is lunatic, insane or distracted, it shall be the duty of the county court aforesaid to appoint some fit person to be conservator of his or her estate.

Bond of conservator and conditions thereof.

1699. SEC. 2. The conservator of such estate, so appointed, shall enter into bond, with sufficient security, to be approved by the court, to the people of the state of Colorado, in double the amount of the estate of such lunatic, which shall be ascertained by the county court aforesaid, conditioned for the faithful discharge of his duties as such conservator.

1700. SEC. 3. The conservator shall have the entire care and charge of the estate of such lunatic, both real and personal, and shall make an inventory of such estate, in the same manner as administrators are required to inventory the estates of their intestates; and shall return the same, verified by his affidavit, into the county court, within thirty days after his appointment. Care and custody of lunatic's estate; duties of conservator.

1701. SEC. 4. The conservator shall collect and take possession of all the estate of the lunatic, real and personal; and shall have power to collect all debts due to such lunatic; and may maintain all necessary actions at law in the name of such lunatic, by himself, as conservator, against all persons who withhold or injure any of the estate of such lunatic, or from whom any such debt or damages may be due to him and unpaid. Conservator may maintain action in name of lunatic

1702. SEC. 5. In all actions against the lunatic, service of process shall be made upon his conservator, who shall defend every such action. Service of process against lunatics.

1703. SEC. 6. It shall be the duty of the conservator to apply the annual income and profits of the estate of the lunatic, and the proceeds of all sales and mortgaging of such estate, as hereinafter mentioned; first, to the payment of the debts of such lunatic, and the surplus thereof to the maintenance of such lunatic, and his or her family, and the education of the children, if any, of him or her; in all cases under the direction of the county court. How proceeds of estate of lunatic to be applied.

1704. SEC. 7. The county court shall have jurisdiction to allow demands against the lunatic, to be satisfied out of his or her estate, upon the presentation thereof, with notice to the conservator, in the same manner as against intestate estates. Allowance of demands against lunatic; shall be presented to county court.

1705. SEC. 8. All persons having claims against any lunatic, shall present the same for allowance to the county court, or cause suit to be instituted thereon in some other court, within one year after the appointment of the conservator, or be barred of any share in the estate of such lunatic, contained in the inventory filed as aforesaid. Within what time claims against lunatic shall be presented to county court.

1706. SEC. 9. No writ of execution shall issue to enforce a judgment recovered against any lunatic after the appointment of a conservator, until such lunatic, upon in-

In what manner judgment against lunatic to be enforced against his estate.

quisition, as hereinafter provided, shall have been declared sane; but every such judgment shall be enforced against his estate in the manner provided for the collection of judgments against executors and administrators for the debts of their testators or intestates.

Allowance to wife of lunatic out of his estate.

1707. SEC. 10. The wife of such lunatic, upon the return of the inventory of his estate, may select and take the articles which would be allowed to her as his widow, in case of his death; and the county court, if satisfied that such lunatic is solvent and hath property more than sufficient to pay all his debts, may make further allowance to the wife, for her support and the support and education of the minor children, if any, to be paid at such times and in such sums as the court may direct.

Powers of conservator in relation to personal estate and leasing of real estate of lunatic.

1708. SEC. 11. The conservator shall have power to sell the personal estate, and *choses in action*, of the lunatic, and to lease his or her lands, upon such terms and conditions as the county court may, by an order previously entered of record, direct and approve; but no such lease shall be for a term exceeding five years; and every order for the sale of the personal estate, shall specify particularly the amount thereof which shall be sold.

When sale of estate of lunatic exempt from execution, may be made.

1709. SEC. 12. Real and personal estate which is or may be by law exempt from execution, shall not be sold except for the support of such lunatic, or his wife or children.

In what manner real estate of lunatic sold or mortgaged.

1710. SEC. 13. Whenever it shall be necessary to sell the real estate of any lunatic, or to raise money by the mortgage of the same, for the purpose of paying his or her debts, or redeeming other real estate from mortgage or other encumbrance, or for the support of his or her family, and the education of his or her children, the conservator may procure an order for the sale or mortgaging thereof, from the county court wherein he was appointed, upon petition in the same manner as provided for the sale of the real estate of intestates by administrators; such petition, sale, report thereof and conveyance of the estate sold, shall be conducted in the same manner as provided in the chapter concerning wills, executors and administrators.

1711. SEC. 14. To every such petition, the persons

who would inherit such estate of the lunatic, in case of his or her death, shall be made defendants; and every such petition shall set forth particularly the purpose for which such sale is deemed necessary.

Petition for mortgage or sale of lunatic's estate; who shall be made defendants.

1712. SEC. 15. The conservator, at the first term of the county court, succeeding six months after his appointment and at every alternate term thereafter, shall present to the court an account of his administration of the affairs of the lunatic, setting forth the amount of money received by him, and the sources from which the same was received, the amount and the several articles of personal property, and *choses in action* on hand, and the several sums of money expended by him; and every such report shall be accompanied by the proper vouchers for such expenditures.

Report of conservator, when to be made, etc.

1713. SEC. 16. The county court shall proceed upon every such accounting, to apportion the money in the hands of the conservator, among the creditors of such lunatic, as in the case of intestates' estates, upon the accounting of the administrator.

Apportionment of money in hands of conservator, county court.

1714. SEC. 17. If there be any surplus after the payment of debts and the expenses of administration, the court may direct the conservator to pay to the wife of such lunatic, for her support, and the support and education of the minor children, an allowance, to be fixed by the court, suitable and according to her condition in life; and such allowance may be increased or diminished from time to time, as the court may see fit.

Disposition of surplus of moneys belonging to estate of lunatic.

1715. SEC. 18. The allowance for such minor children may be paid to the guardian, if the court shall so direct.

How allowance to minor children paid.

1716. SEC. 19. The conservator shall receive, for his care and trouble, such reasonable compensation as the court may allow.

Compensation of conservator.

1717. SEC. 20. The county court may, from time to time, require additional security upon the bond of any conservator, and for default of giving such additional security, when ordered by the court, or for any default or misconduct in office, may remove any conservator and appoint a successor.

Additional security on bond of conservator; removal and appointment of successor.

1718. SEC. 21. Any conservator may, upon making final and true account of his administration of the affairs of

Resignation of conservator.

the lunatic, resign his office; and such resignation shall be accepted by the county court wherein such conservator was appointed; but no such resignation or the acceptance thereof, shall be construed to discharge the conservator or his securities, from any liability previously incurred.

Delivery of estate of lunatic by conservator to successor.

1719. SEC. 22. Whenever the conservator of any lunatic shall resign, or be removed from his office, such conservator shall, on the demand of the successor appointed by the county court, deliver to such successor, possession of all money, chattels, real estate, evidences of debt, and *choses in action*, in his hands or possession, and belonging to such lunatic.

Who to have custody of body of lunatic; how supported.

1720. SEC. 23. The overseer of the poor-house of the county, or such other person as the county commissioners may appoint, shall, in case any lunatic hath no relative or friend who will care for him or her, have the charge of the body of such lunatic, and shall have power to confine him or her, and shall comfortably support such person, and make out an account thereof and return the same to the county commissioners, whose duty it shall be, on satisfactory proof of the justice of such account, to issue their warrant on the treasury of the county therefor; or, if such lunatic hath any estate in the hands of his conservator, such account shall be rendered to the county court, and upon the order of the county court, the conservator shall pay the same out of any moneys in his hands pertaining to such estate, and which may lawfully be so applied.

Proceedings in case of sale, mortgage, or lease of real estate in this state belonging to lunatics in other states.

1721. SEC. 24. The conservator of any lunatic, appointed in any state or territory of the United States, beyond this state, may avail himself of the provisions of this chapter, in order to sell, mortgage, or lease the real estate of such lunatic, situate in this state, upon filing, together with his petition, a bond for costs, as in other cases, a duly exemplified copy of his appointment as such conservator, and satisfactory proofs that he hath given adequate and sufficient security for the faithful application of the funds arising from such sale.

1722. SEC. 25. If any such lunatic shall be restored to his or her reason, then all of his or her estate, real and personal, remaining in the hands of his or her conservator

shall, by such conservator, on the order of the county court by which such conservator was appointed, be restored to him or her; in case of the death of any such person, the remainder of his or her estate shall, in like manner, on the order of the county court, be surrendered to his or her executors or administrators, deducting in all cases, the reasonable compensation of such conservator.

Disposition of property in case of restoration to reason or death of lunatic.

1723. SEC. 26. All contracts, agreements, and credits with or to any such lunatic, shall be absolutely void as against such person, his or her heirs, or personal representatives; but persons making such contracts or agreements with any such lunatic, shall be bound thereby, at the election of his or her conservators. If any person, by trading, bartering, or gaming with any lunatic person, knowing him or her to be such, or by any other device, obtain possession of or title to any lands, tenements, goods or chattels of any such lunatic, he shall be deemed guilty of swindling, and upon conviction, shall be liable to all the penalties of swindling, as in other cases; and all property so acquired, shall be restored to such lunatic, his or her conservators, heirs, executors or administrators.

Contracts and agreements with lunatics: when to be deemed and punished as swindling.

1724. SEC. 27. If any person shall present to the county court of the county where any such conservator hath been appointed, an information in writing, setting forth that the insane person hath been restored to his or her reason, such court shall cause the fact to be inquired of by a jury. If upon such inquest, it shall be found that such person hath been restored to his or her reason, he or she shall be immediately set at liberty, and the county court shall issue a summons requiring the conservator to appear and settle his accounts. The expenses attending any inquest held under this chapter, shall be paid out of the estate of such insane person, upon the order of the county court, or, if there be no such estate, the county commissioners of the proper county, upon certificate of the amount thereof by the judge of the county court, shall allow the same, and a warrant therefor shall be drawn upon the county treasurer.

How inquest had to determine restoration of lunatic to reason.

1725. SEC. 28. Whenever any maniac, or furiously insane person shall be found at large, and there is no friend or relative of such maniac who will confine and care for

Custody of body of maniac or furiously insane person.

him, it shall be lawful for the sheriff, or any constable, of the county where such maniac may be found, to arrest and confine him in the county jail or other place, until an inquest can be had as provided in section one; if upon such inquest it shall be found that such person is a furious maniac, or is so disordered in his mind as to endanger his own person, or the persons or property of others, if allowed to go at large, it shall be lawful for the county court by an order to be entered of record, to commit such insane person to the county jail, to be there confined until discharged upon inquest, as provided in the preceding section: *Provided*, that upon application of any friend or relative of such maniac, and satisfactory proof that the applicant is such friend or relative and is a proper person to have the custody of such maniac, the county court shall order the body of such maniac to be delivered into the custody of such friend or relative.

Inquisition of lunacy; notice to be given of, and to whom.

1726. SEC. 29. No inquest of lunacy shall be held under this chapter until at least ten days' previous notice thereof shall have been given to the alleged lunatic, by citation, issuing out of the county court, setting forth the time and place, when and where such inquisition will be had, and requiring the alleged lunatic to attend thereat: *Provided*, that this shall not prevent the arrest and confinement of any furious maniac, as provided in the preceeding section, pending such notice and inquest: *And provided further*, that if such alleged lunatic appear and consent to such inquest, the same may be had without such notice. No inquest shall be had as to the lunacy of any person charged with any criminal offense, until the like notice to the district attorney or other officer charged by law to prosecute such offense. Nothing in this chapter shall be so construed as to exempt the relatives and next of kin of any insane pauper, from their liability for his or her support; and all moneys expended by any county for the maintenance of any such insane person, under the provisions of this chapter, may be recovered of the person or persons who are or may be liable by law for his or her maintenance.

1727. SEC. 30. All sums of money received into the

state treasury, from the collection of the tax for the support of lunatic paupers, as provided in the chapter concerning revenue, shall be kept separate and apart from all other funds in said treasury, and shall be designated as the "fund for the support of the insane," and such fund shall be disbursed as follows:

Fund for support of insane; how kept.

1728. SEC. 31. Whenever any county shall hereafter expend any sum of money in the necessary support, maintenance or preserving in custody of any lunatic pauper, such county shall be reimbursed from the fund for the support of the insane. The county commissioners of such county shall present an account of all such expenditures, expressing the items of such expenditure, the name of the pauper for whose support the same was made, and the time of such expenditure, to the auditor of the state, and together with such account they shall present the accounts of the person to whom such sum of money was paid, with attached thereto the affidavit of such person that such account is true and just, that the services charged for were actually and necessarily rendered in the support and keeping of such pauper, and that he hath received from such county payment therefor; also, together with said account shall be presented an exemplification of the record of the proceedings in the county court of such county, whereby such pauper was adjudged to be a lunatic, and a certificate from the county judge that such lunatic hath not been since adjudged sane as provided by law; *provided*, that such exemplification shall be filed and preserved by the auditor in his office, and at any subsequent presentation of any claim for the support of the same lunatic, it shall not be necessary to renew such exemplification. Upon the presentation of such account, verified as aforesaid, and upon proof, by the affidavit of two or more of such county commissioners, that such lunatic hath no estate, and no relation within the state, so far as known or believed by them, or none of sufficient ability to maintain him or her, the auditor, if nothing appears to show that such claim is fraudulent or factitious, shall allow the same, and draw his warrant upon the treasury for the amount so allowed, payable out of the insane fund. That until such

Fund for support of insane; how expended.

Transportation of lunatic to, and keeping at asylum of other states how expense paid (Amendment 1877.)

time as the state of Colorado shall have provided a place for the custody and subsistence of lunatic paupers, the same shall be transported to some convenient asylum, either within or out of the limits of this state, where such pauper will receive such attention and treatment as she or he may require; the expense necessarily incurred in and about the transportation of such lunatic pauper, as well also his or her bills at the asylum, shall be borne and paid by the county of which such lunatic panper is a resident, the same upon proper vouchers, presented for that purpose, to be repaid to such county out of the state fund for the support of the insane.

Payment of such amonnts.

1729. SEC. 32. All such warrants shall be paid as other warrants are, in the order in which the same are presented.

Recovery of moneys expended for support of lunatic from relatives bound for his support.

1730. SEC. 33. If at any time after the payment of any such account for the support of any lunatic pauper, it shall appear that such lunatic had, at the time, relations within the state, bound by law, and of sufficient ability, to support him or her, an action shall lie in behalf of the state to recover from such relative all such sums of money so expended.

Construction of the term lunatic.

1731. SEC. 34. The term lunatic, as used in this chapter, shall be construed to include idiots, insane and distracted persons, and every person who by reason of intemperance, or any disorder or unsoundness of mind, shall be incapable of managing and caring for his own estate.

CHAPTER LXII.

MARKS AND BRANDS.

AN ACT IN RELATION TO MARKS AND BRANDS UPON FLOUR, MEAL OR OTHER GOODS.

Be it enacted by the General Assembly of the State of Colorado:

1732. SECTION 1. Any person or persons who wish to manufacture or deal in flour or any other goods, and wishing to retain the exclusive right and use of their trade mark or brands, shall make a particular description in writing of

his or her or their brand or mark, and file the same for record in the office of the secretary of state; the same writing to be accompanied by a *fac simile* of such brand or mark, and be acknowledged by at least one of the persons adopting the same, as deeds of land are acknowledged; *Provided*, that no person shall be permitted to file a mark or brand similar to any one previously filed. And it shall be the duty of the secretary of state to keep a book in his office for the recording of such brands and marks as aforesaid, and a certified copy of any such record by the secretary of state shall be evidence in all courts of the making and filing thereof and the contents; and the fees of the secretary of state for recording each certificate shall be five dollars.

In what manner to procure exclusive right and use of mark or brand.

Fees of secretary of state for filing and recording certificate thereof.

1733. SEC. 2. No person or persons whatever shall be permitted to use or refill any barrels, sacks or packages with flour or other goods containing the brand or mark of the manufacturer or dealer thereof for the purpose of deceiving the purchaser or consumer, or injuring the reputation of the manufacturer or his brand.

Using or refilling barrels, sacks, or packages bearing the brand of manufacturer or dealer.

1734. SEC. 3. All persons who shall knowingly or wilfully violate any of the provisions of this act, shall be deemed guilty of a misdemeanor; and all persons convicted for such offense shall be fined not less than ten and no more than two hundred dollars; and the manufacturer shall be entitled to such damages as may be made to appear.

Penalty for violations of this act.

Approved, January 24, 1877.

CHAPTER LXIII.

MARRIAGES.

[Revised Statutes, Chapter LIX.]

1735. SECTION 1. Marriage is considered in law a civil contract, to which the consent of the parties is essential.

Marriage a civil contract.

1736. SEC. 2. All marriages between parents and children, including grandparents and grandchildren of every degree; between brothers and sisters of the one-half, as well as the whole blood, and between uncles and nieces, aunts

What marriages insensuous and void. Marriages according to customs of New Mexico:

and nephews, and cousins of the first degree, are hereby declared to be incestuous and absolutely void; and all marriages between negroes and mulattoes, of either sex, and white persons, are also declared to be absolutely void. This section shall extend to illegitimate, as well as legitimate, children; *provided*, that nothing in this section shall be so construed as to prevent the people living in that portion of the state acquired from Mexico from marrying according to the custom of that country.

Punishment for contracting or solemnizing marriages contrary to preceeding section

1737. SEC. 3. Whosoever shall knowingly contract marriage in fact, contrary to the prohibitions in the preceding section, and whosoever shall knowingly solemnize any such marriage, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than fifty nor more than five hundred dollars, or imprisonment for not less than three months nor more than two years, or both, at the discretion of the court which shall try the cause.

Validity of marriages contracted without this state. Bigamy and polygamy not allowed.

1738. SEC. 4. All marriages contracted without this state, which shall be valid by the laws of the country in which the same were contracted, shall be held valid in all courts within this state; *provided*, nothing in this section shall be construed so as to allow bigamy or polygamy in this state.

Who may perform marriage ceremony.

1739. SEC. 5. Any judge or justice of the peace, clergyman, or licensed preacher of the gospel, may perform the ceremony of marriage in this state.

Marriage of parties under their majority; consent of parents or guardian; penalty for violation of this section.

1740. SEC. 6. No judge, justice of the peace, clergyman, preacher of the gospel, or other person, shall knowingly join in marriage, any male under the age of twenty-one, or female under the age of eighteen years, without the consent of their parents, or guardian under whose care and government such minor may be; *provided*, if the parties desiring to be married have no parents or guardian in this state, then the person chosen to solemnize the marriage, shall exercise his own judgment in uniting them in marriage. Any person who shall knowingly violate the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine not exceeding five hundred dollars.

Record and certificate of marriages; penalty for failure to make return of certificate.

1741. SEC. 7. Every person having authority to join others in marriage, shall keep a record of all marriages solemnized before him, and within three months, transmit a certificate of every marriage, containing both christian and surname, to the clerk of the county in which such marriage took place. Any person refusing or neglecting to make such return within the above required time, shall forfeit for every such offense, the sum of one hundred dollars, to be recovered, with costs by the recorder.

Penalty for failure of recorder to enter return of marriage certificate of record

1742. SEC. 8. The clerk shall record all such returns of marriages, in a book to be kept for that purpose, within one month after receiving the same. If any recorder shall neglect or refuse to record within the said time any return to him made, he shall forfeit one hundred dollars, to be recovered, with costs, by any person who will prosecute for the same.

Certified copies of entries in record of marriages to be evidence.

1743. SEC. 9. The books of marriages to be kept by the respective recorders, and copies of entries therein, certified by him, under his official seal, shall be evidence in all courts.

Penalty for making false return or falsifying record of marriage.

1744. SEC. 10. If any person, authorized to solemnize any marriage, shall wilfully make a false return of any marriage, or pretended marriage, to the clerk; or if the clerk shall wilfully make a false record of any return of a marriage, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars, and by imprisonment of not less than three months.

Disposition of fine and penalties.

1745. SEC. 11. All fines and penalties accruing under the provisions of this chapter shall be paid into the county treasury for the use of common schools in which the offense was committed.

Confirmation of marriages solemnized prior to March 10, 1874.

1746. SEC. 12. All marriages which have been solemnized in this state, whether by any president or judge of any mining district, elected under and acting by the laws thereof, or by any justice of the peace or clergymen, prior to the tenth day of March, A. D. 1864, are hereby declared confirmed and made legal, and all children, the issue of such marriage, shall have the same right in law and equity as if such marriage had been solemnized according to the provisions of this chapter.

CHAPTER LXIV.

MARRIED WOMEN.

[Revised Statutes, Chapter LX.]

What property of married woman not liable for debts nor subject to disposal of husband

1747. SECTION 1. The property real and personal, which any woman in this state may own at the time of her marriage, and the rents, issues, profits and proceeds thereof, and any real, personal or mixed property which shall come to her by descent, devise or bequest, or the gift of any person except her husband, including presents or gifts from her husband, as jewelry, silver, table ware, watches, money and wearing apparel, shall remain her sole and separate property, notwithstanding her marriage, and not be subject to the disposal of her husband, or liable for his debts.

Sale and conveyance of personal property by married woman.

1748. SEC. 2. Any married woman, while married, may bargain, sell and convey her personal property, and enter into any contract in reference to the same as if she were sole.

May sue or be sued as if sole.

1749. SEC. 3. Any woman may, while married, sue and be sued, in all matters having relation to her property, person, or reputation, in the same manner as if she were sole.

Not to bequeath more than one-half of her property away from husband.

1750. SEC. 4. Any woman may, while married make a will, but she shall not bequeath away from her husband more than one-half of her property, both personal and real, without his consent in writing.

In case married man deprive his wife of over one-half his property by will.

1751. SEC. 5. In case any married man shall hereafter deprive his wife of over one-half his property, by will, it shall be optional with such married woman, after the death of her husband, to accept the conditions of such will, or one-half of his whole estate, both real and personal.

Earnings of married woman from any trade or business carried on by her.

1752. SEC. 6. Any married woman may carry on any trade or business, and perform any labor or services, on her sole and separate account, and the earnings of any married woman, from her trade, business, labor or services, shall be her sole and separate property, and may be used and invested by her in her own name; and she may sue and be sued as if sole, in regard to her trade, business, labor, services and earnings, and her property acquired by

trade, business and servises, and the proceeds thereof, may be taken on any execution against her.

1753. SEC. 7. Nothing in this chapter contained, shall invalidate any marriage settlement or contract, now made or to be hereafter made. Invalidation of marriage settlement.

1754. SEC. 8. In all marriages hereafter contracted, the husband shall be liable for the debts and the liabilities of the wife contracted before marriage, to the extent of the real and personal property he may receive with or through her, or derive from the sale or rent of her lands, and no further. To what extent husband liable for debts of wife contracted before marriage.

1755. SEC. 9. Such liability of the husband shall not be extinguished by the death of the wife. Liability in case of death of wife.

1756. SEC. 10. When any woman against whom liability exists shall marry, and has, or acquires lands, judgment on such liability may be rendered against her and her husband jointly, to be levied on such lands only. Judgment against husband and wife for her debts satisfied out of her lands.

1757. SEC. 11. The separate deed of the husband shall convey no interest in the wife's lands. Separate deed of husband conveys no interest in wife's lands.

AN ACT CONCERNING MARRIED WOMEN.

[Session Laws, 1872.]

1758. SECTION 1. Any woman may, while married, execute any bond, bill, promissory note, or other instrument in writing, for the direct payment of money; and if the consideration thereof went to the benefit of her estate, she shall be liable thereon in an action at law, and a judgment obtained against her thereon in a court of record shall be a lien on her real estate, and execution may issue on such judgment as in other cases. When married women may be liable to actions at law.

AN ACT CONCERNING MARRIED WOMEN.

[Session Laws, 1874.]

1759. SECTION 1. That hereafter any woman, while married, may bargain, sell and convey her real and personal property, and enter into any contract in reference to the same, as if she were sole. Contracts and conveyances of real and personal property.

Suits by and against.

1760. SEC. 2. Any woman may, while married, sue and be sued in all matters the same as if she were sole.

Power to contract debts, execute promissory notes, etc.

1761. SEC. 3. Any woman, while married, may contracts debts in her own name and upon her own credit, and may execute promissory notes, bonds, bills of exchange and other instruments in writing, and may enter into any contract the same as if she were sole; and in all cases where any suit or suits, or other legal proceedings shall be instituted against her, and any judgment, decree or order therein, shall be rendered or pronounced against her, the same may be enforced by execution or other process against her the same as if she were sole.

CHAPTER LXV.

MILITIA.

[Revised Statutes, Chapter LXI.]

ARTICLE I. MILITARY DISTRICTS AND MILITARY ORGANIZATION.

Who subject to military duty.

1762. SECTION 1. Every able-bodied male citizen of Colorado, and those who have declared their intention to become citizens of the United States, between the ages of eighteen and forty-five years, except those who are by the laws of the United States, and by this chapter, exempted therefrom, shall be subject and liable to perform military duty as a soldier, to uphold the constitution and laws of United States and the constitution and laws of this state.

Division of state into military districts.

1763. SEC. 2. The state shall be divided into two military divisions or districts, as follows, viz: By a line running due east and west through the same, which shall pass through the town of Bradford; the portion of the state lying north of said line constituting the first, and that south of it, the second division.

Appointment of officers of divisions.

1764. SEC. 3. The governor shall be commander-in-chief of the militia, and shall have power, by and with the consent of the senate, to appoint one major-general for each division, and one or more brigadier-generals for each division, as may be required; one adjutant-general, who shall be *ex officio* quartermaster-general, and one inspector-general,

who shall act as paymaster-general; and is empowered to fill vacancies in these offices when the council is not in session.

Military board; how constituted.

1765. SEC. 4. The governor, adjutant-general, inspector-general and the two major-generals, shall constitute a military board which shall convene whenever the commander-in-chief may order or the public good require.

Duties of military board.

1766. SEC. 5. It shall be the duty of the military board to consider all matters relating to the organization, efficiency, discipline, army equipments, ammunition, uniform and parades of the state militia, and after the first enrollment, and after each annual enrollment, to sub-organize the divisions into brigades; and when any new brigade is formed in either division, the governor shall appoint and commission a brigadier-general to command it, as hereinbefore provided. The brigadier-generals may be present at the sittings of the military board, when required, but shall not vote in its proceedings.

ARTICLE II. ENROLLMENT.

Duties of adjutant general in relation to enrollment of militia.

1767. SECTION 1. It shall be the duty of the adjutant-general of the state, annually hereafter, before the day which is or may, by law, be fixed for the delivery to the county assessors of the assessment lists for the annual assessment, to prepare blank rolls for enrolling companies of persons subject to military duty, and to transmit the same to the major-generals, who shall deliver the same to the brigadier-generals, with all possible dispatch; to the end that any person liable to perform military duty be enrolled and prepared for service.

In what manner enrollment to be made.

1768. SEC. 2. It shall be the duty of the several brigadier-generals, upon the receipt of the said blank rolls, to distribute them to the assessors of the several counties, townships, wards or cities comprised in their brigade districts; and said assessors shall, at the same time they are engaged in taking the valuation of real and personal property, in their respective counties, townships, wards or cities, include in their assessments, the names of all persons in their county, township, wards or cities, liable to be enrolled as aforesaid; and if the assessors neglect to perform their

duty, or if it is found necessary at any time, it shall be the duty of the brigadier-general to appoint some suitable person or persons in his brigade district, to act as enrolling officer therein, and to require and command him or them, by a warrant under his hand, to proceed forthwith to enroll all persons as aforesaid; and such enrolling officers and assessors shall report said enrollment to him as soon as completed.

Administration of oaths by enrolling officers. Compensation.

1769. SEC. 3. The assessors and other enrolling officers shall have power to question, under oath, which they are hereby authorized to administer, any person deemed liable to do military duty, but who denies the same; and if any person refuses to be sworn, the assessor shall enroll his name in the same manner as if he admitted his liability. The assessors and enrolling officers shall receive for each name enrolled as above, the sum of five cents, and for each oath so administered, the sum of ten cents.

Penalty for refusal or neglect of enrolling officer to perform duties; disposition of penalties.

1770. SEC 4. If any assessor or enrolling officer shall refuse or neglect to perform any duty enjoined upon them by this chapter, the person or persons guilty of such refusal or neglect shall be liable to a penalty of not less than twenty-five nor more than one hundred dollars, to be recovered by action of debt before any justice of the peace, in the name of the people of the state of Colorado; and all moneys accruing from such prosecutions, shall, after deducting the legal costs and charges, be paid into the treasury of the county to the credit of a separate fund, to be known as the "military fund," subject to the disposal of the military board aforesaid, to meet the expenses of the military organization.

Arrangement of enrolled militia into companies.

1771. SEC. 5. Within twenty days after receiving the returns of the enrolling officers, as provided in the preceding section, it shall be the duty of the brigadier-general to proceed to arrange the enrolled militia into companies, and when so arranged he shall cause copies of said company-rolls to be posted up in the county clerk's office, and in such other places as he may deem advisable; to the end that every person enrolled may know to which company he is attached for service. He shall also cause a list of all the enrolled men of his brigade to be forwarded to the ad-

jutant-general, with the names of all officers and their rank, to be recorded in a book kept by him in his office.

Formation of regiments.

1772. SEC. 6. Each company shall consist of not less than thirty nor more than sixty men, and such persons so enrolled shall constitute the un-uniformed militia of Colorado. Having effected the arrangement into companies, the brigadier-general shall letter them, and form them into regiments of not less than five, nor more than ten companies each, and it shall be his duty to appoint the time for holding company and regimental elections, to preside at the regimental elections, and report the names of the company and regimental officers to the governor, to be commissioned.

Election of company officers.

1773. SEC. 7. When any company shall petition the brigadier-general, he shall order an election for company officers, and the clerks chosen by the company shall report the certified result to him, whereupon he shall forward the names of officers so elected to the governor; and the portion of the militia so officered and reported as ready for parade, shall be designated and known as the uniformed militia of Colorado.

ARTICLE III. CALLING OUT.

Manner of conducting elections

1774. SECTION 1. When the commander-in-chief, with the advice of the military board, shall so direct, the brigadier-general shall order company elections of the non-uniformed militia in their several brigade districts, and proceed to notify each member of each and every company enrolled, either himself or through the sheriff of each county, which notice may be verbal, written or printed; said election shall be held according to military usage, and the clerk chosen by the company shall certify to the result; and after the persons so elected shall have taken the oath of office, he shall forward the result to the governor for commission.

Call for volunteers and conscription in cases of insurrection, invasion etc.

1775. SEC. 2. Whenever it shall be found necessary, in order to surpress insurrection, repel Indian invasion, or to open communication with the eastern states, the commander-in-chief, with the advice of the military-board, may call for volunteers, by companies, in number deemed

advisable, not exceeding two thousand at any one time, and for a designated time: and if the required number of men should not volunteer by companies, he may fill the quota by volunteers at large, to be officered and equipped as provided for uniformed companies of Colorado militia. If the required number should not volunteer in either of these modes, the commander-in-chief, with the consent of the military-board, may order a parade of all enrolled companies for draft, which draft shall be public, and the names drawn in the same manner as the law provides for drawing petit jurors, and the sergeant of the company, or sheriff of the county, shall have power to enforce the appearance of the persons so drawn, or their substitutes, at the appointed rendezvous.

Duties of commanders of divisions, brigades, etc., in cases of insurrection, invasion etc.

1776. SEC. 3. In case of any invasion, insurrection, riot or imminent danger thereof, or threatened attack of Indians, within the limits of any division, brigade, regiment or battalion, it shall be the duty of the commandant of such division, brigade, regiment or battalion, to order out for defense of the state, the militia or any part thereof, always calling first upon the uniformed militia under his command, and immediately report the circumstances attending the same to his commanding officer and to the commander-in-chief; and when arms have not been supplied by the state, the militia so called out, may arm and equip themselves, the damage and loss to be paid by the state: *Provided*, that the militia nor any part thereof shall ever be taken without the limits of the state; and that no part of this section shall be so construed as to authorize the mounting of these companies or the fitting out of any expedition against any Indian tribe in the state or against any people.

Duties of commanding officers in calling out militia in aid of civil authorities; penalty for refusal or neglect to obey order of sheriff.

1777. SEC. 4. In case of any breach of the peace, riot, turmoil, resistance of process, or apprehension of imminent danger of the same, it shall be lawful for the sheriff of any county, or the mayor of any city, to call for aid from any brigade, regiment, battalion or company, and it shall be the duty of the commander of such brigade, regiment, battalion, or company, to whom such order is given, to order out, in aid of the civil authorities, the military

force or any part thereof, under his command. Such officer shall be subject to the sheriff or public officer so requiring his service, and for refusing or neglecting to obey the order of the sheriff, or public officer, or hindering or preventing his men performing such duty, every military officer so offending shall be liable to a fine of not more than five hundred dollars, and imprisonment in the county jail for a period of not more than three months, and in addition thereto such officer shall be liable to be tried by court martial and sentenced to be cashiered and incapacitated forever after for holding any military commission in this state. Any non-commissioned officer or private, like offending, shall be subject to a fine of not more than fifty dollars, to be recovered in action of debt and paid into the military fund of the county, deducting legal costs and charges.

ARTICLE IV. ELECTIONS, PARADES AND DRILLS.

1778. SECTION 1. It shall be the duty of the adjutant-general to prepare and distribute printed blanks for warrants, to commanding officers, to compel the attendance of officers, and enrolled militiamen at any election, parade or drill, duly authorized by law, which warrants issued under said officer's hand shall have due force of law and shall be in the following form: Form of warrants to compel attendance at elections, parades and drills.

S. S. HEADQUARTERS,
——DIV., ——BRIG., ——REG.,

(Name of person.) You are hereby directed (here insert order.)

Given under my hand this—— day —— year.

Signed: A——B——.,
Rank, Div., Brig., Reg.,
Colorado Militia.

Said warrant may be presented to the person so summoned, or left at his house, or usual place of business; and any person summoned as above, who shall neglect or refuse to appear at any election, parade or drill acording to orders, shall forfeit the sum of ten dollars to be paid into the county treasury and credited to the militia fund. Penalty for refusal to obey warrant.

Parade of militia, annual inspection and drill of uniformed militia; penalty for non-attendance at annual parades.

1779. SEC. 2. The commander-in-chief, with the advice of the military board, may order parade of all the uniformed and non-uniformed militia, at any time the public exigencies may require. The uniformed militia shall appear by companies for drill and inspection one day in the year, viz: The first Tuesday in June, every year, with such arms and equipments as the military board shall provide, or with their own arms and equipments. Any officer or private, belonging to any uniformed company, who shall neglect or refuse appear at such parade, shall be returned to the county assessor as a military delinquent by his officers, and the assessor shall thereupon add the sum of two dollars to the said person's assessments for that year, to be collected as other taxes, and applied to the military fund of the county. All members of uniformed military companies who shall be present at all elections and parades, shall annually receive the sum of two dollars, out of the military fund of the county; and every member of such companies having the certificate of his commander, certifying to his proper performance of military duty, according to law and regulations during the several elections, parades and drills, or other military assemblage, required by law, or ordered by superior officers, shall be exempt for the year such certificate is given, from all poll taxes, involuntary jury duty, and from military duty, except in the corps to which he belongs. The term of service of the uniformed militia, and the tenure of office, shall be two years from the date of the election of company officers.

Annual compensation for attendance at elections and parades.

In what cases parades may be ordered on election day.

1780. SEC. 3. No parade or rendezvous of the militia shall be ordered on any day set apart by law for an election, unless on demand of civil officers, to suppress riot, tumult or invasion.

ARTICLE V. OFFICERS AND STAFF.

Formation of division, brigade and regimental staff; regimental and company officers.

1781. SECTION 1. There shall be attached to each division of militia of this state, one major-general and his staff, consisting of one aid, one inspector, one engineer, one paymaster, one commissary, and one quartermaster, each with the rank of major, to be appointed by the major-general. To every brigade there shall be one brigadier-

general, with his staff, consisting of one aid, one inspector, one paymaster, and one quartermaster, each with the rank of captain, to be appointed by the brigadier-general. To every regiment shall be one colonel, one lieutenant-colonel, and one major, to be chosen by the members of the regiment; and the colonel's staff shall consist of one adjutant, one quartermaster, one assistant quartermaster, one surgeon, one assistant surgeon, one sergeant-major, and two musicians, to be appointed by the colonel. There shall be to every company, one captain, one first, and one second lieutenant, one orderly sergeant, four sergeants, and four corporals, and the captain shall appoint two musicians.

Staff of commander-in-chief.

1782. SEC. 2. The staff of the commander-in-chief shall consist of one adjutant-general, the inspector-general, one judge advocate general, and two or more aids, as exigencies may require, who shall rank as colonels.

ARTICLE VI. MILITARY FUND—COMPENSATION.

Military poll tax; how assessed and collected.

1783. SECTION 1. For the purpose of carrying into effect the provisions of this chapter, and for creating a state military fund, an annual poll-tax of fifty cents shall be and is hereby levied upon each male inhabitant of the state, of the age of twenty-one years and upward, to be known as the military poll-tax, which shall be assessed and collected in the same manner and at the same time as is now or may be prescribed by law for the assessment and collection of state poll-taxes.

Duties of county treasurers in relation to military fund.

1784. SEC. 2. It shall be the duty of every county treasurer in this state to provide suitable books, in which shall be entered an account of all fines and penalties, and all taxes collected in pursuance of this chapter. He shall also enter in said book an account of all money paid out of said fund and for what purpose.

Application and payment of military fund.

1785. SEC. 3. The fund so created shall be applied exclusively for military purposes, for the benefit of the militia, and for fitting out and paying the expenses of state defense, and no money shall be paid by the county treasurer from such fund but upon the joint order of the senior officer of each regiment in said county, or if there is no regimental organization in such county, then upon the joint

order of the senior officer of each company, countersigned by the brigadier-general commanding the brigade district, and if there be none of the above-named, then by the chairman of the board of commissioners of said county, or upon order of the military board.

Disposition of county military fund

1786. SEC. 4. It shall be the duty of the county treasurer in the several counties to preserve the county military fund, as provided by this chapter, a separate fund, and after paying the company and regimental expenses of the county, as hereinbefore provided, to transmit the balance annually to the treasurer of the state, along with the state taxes, and the state treasurer shall keep the same as a state military fund, to be at the disposal of the military board or officers, as provided in section three of this article.

Fees of county treasurers.

1787. SEC. 5. The treasurer of any county to whom any fine shall be paid, may retain therefrom five per cent. as his fees, for the receipt and custody thereof, and from all taxes two per cent.

Compensation of adjutant general.

1788. SEC. 6. The adjutant-general shall be entitled to receive annually, as compensation for his services, the sum of five hundred dollars, to be paid out of the state treasury, until a sufficient sum has accrued to the military fund, when the military board may direct his salary to be paid out of such fund.

Pay of officers and privates when in active service

1789. SEC. 7. Each officer and private of every company called into active service, to repel invasion or surpress Indian depredations, shall receive one dollar and a half per day out of the military fund, and when serving under the sheriff of a county, or mayor of any city, two dollars per day, or night, to be paid out of the county or city treasury, as the case may be.

ARTICLE VII. MISCELLANEOUS.

Care and provision of wounded and disabled.

1790. SECTION 1. Every person who, whilst in the actual service of the state, shall be wounded or disabled in opposing or suppressing any riot or invasion, or in any Indian expedition, shall be taken care of and provided for at the expense of the state; and the commanding officer of any portion of the militia in the field, may provide suitable hospital and medical provisions, when the military board has not provided the same.

Claims for military service and expenditures.

1791. SEC. 2. The military board shall audit all claims for military service and expenditures, under the provisions of this chapter, except the *per diem* of officers and privates of the uniformed militia, as provided in article sixth, and may direct their payment out of the state military fund, and may call upon the county treasurer to pay over the county fund to the treasurer of the state, whenever the exigencies may demand. No charge shall be allowed, or pay received, for any commissions issued under the provisions of this chapter.

Who exempt from enrollment.

1792. SEC. 3. The following persons are exempt from enrollment under this chapter, to wit: The executive and judicial officers of this state, lunatics, idiots, sheriffs, constables, clerks of courts, justices of the peace, and all United States officers.

Rules for government of militia; uniform

1793. SEC. 4. If any person shall molest any officer or private when on duty, the commanding officer may require such person to be put under guard during the time of such parade; and the act of congress commonly called articles of war, embraced in an act for establishing rules and articles for the government of the armies of the United States, is made a part of this chapter, so far as its provisions can be made applicable to the service of this state, and not inconsistent with this chapter. The uniform of all companies of the uniformed militia shall be such as the companies themselves may select, and such companies are authorized to establish such by-laws, for the government of such companies as they deem advisable, not inconsistent with this chapter or the laws of congress.

Appropriations by counties, cities and towns for formation and equipment of volunteer companies.

1794. SEC. 5. The corporate authorities of any town or city, or board of county commissioners of any county in this state, are hereby authorized to appropriate such sum as they may deem expedient for the purpose of aiding in the formation and equipment of volunteer companies mustered into the service of this state, for the purpose of enforcing the laws, suppressing insurrection, repelling hostile invasion or the prevention of Indian depredations.

1795. SEC. 6. For the purpose of raising the means to pay any appropriation pursuant to the foregoing section, the corporate authorities of any town or city, or board of

Levy and collection of tax by counties, cities and towns, for payment of aforesaid appropriation.

county commissioners of any county, making such appropriation, may cause a tax to be levied and collected, not exceeding two per cent. on the dollar per annum, upon the taxable property of such town, city or county, according to the total valuation or assessment of property, in any such town, city or county. Any appropriations heretofore made by the authorities of any town, city or county, for the purpose mentioned in the preceding section are hereby legalized, and the payment thereof may be provided for by the levy and collection of a tax, not exceeding two per cent. on the dollar per annum, as other city or county taxes.

Denomination of such fund.

1796. SEC. 7. All funds or money which shall be raised or appropriated under the two foregoing sections, shall be kept separate and apart, and be denominated the military fund.

CHAPTER LXVII.

MINES AND MINING CLAIMS.

[Revised Statutes, Chapter LXII.]

The term claim defined; rights acquired under miners' law not to be impaired.

1797. SECTION 1. The term claim, as used in the mining portions of this state, when applied to a lode, shall be construed to mean one hundred feet of the length of such lode, surface measurement, of the entire width of such lode or crevice; *provided*, that in any case where the regulations of any mining district have heretofore defined the term claim to mean other than as above defined, nothing in this chapter shall be so construed as to impair the rights of any person or persons holding claims under such regulations as may have been heretofore established by the people of the district in which such claim or claims are situated.

Right of way for bringing water into mines

1798. SEC. 2. Whenever any person or persons are engaged in bringing water into any portion of the mines, they shall have the right of way secured to them, and may pass over any claim, road, ditch, or other structure; *provided*, the water be guarded so as not to interfere with prior rights.

1799. SEC. 3. No person shall have the right to mine

under any building or other improvement, unless he shall first secure the parties owning the same against all damages, except by priority of right. Mining under buildings or improvements of others.

1800. SEC. 4. If any person or persons shall locate a tunnel claim, for the purpose of discovery, he shall record the same, specifying the place of commencement and termination thereof, with the names of the parties interested therein. Record of location of tunnel claims.

1801. SEC. 5. Any person or persons engaged in working a tunnel, within the provisions of this chapter, shall be entitled to two hundred and fifty feeet each way from said tunnel, on each lode so discovered; *provided*, they do not interfere with any vested rights. If it shall appear that claims have been staked off and recorded prior to the record of said tunnel, on the line thereof, so that the required number of feet cannot be taken near said tunnel, they may be taken upon any part thereof where the same may be found vacant; and persons working said tunnel shall have the right of way through all lodes which may lie in its course. Tunnel claims defined; right of way through lodes.

1802. SEC. 6. When it shall appear that one lode crosses, runs into, or unites with any other lode, the priority of record shall determine the rights of claimants; *provided*, that in no case where it appears that two lodes have crossed one another, shall the priority of record give any person the privilege of turning off from the crevice or lode which continues in the same direction of the main lode upon which he or they may have recorded their claim or claims, but such person or persons shall, at all times, follow the crevice running nearest in the general direction of the main lode upon which he or they may have recorded their claim or claims Rights of claimants where lodes unite or cross.

1803. SEC. 7. Where two crevices are discovered at a distance from each other, and known by different names, and it shall appear that the two are one and the same lode, the persons having recorded on the first discovered lode shall be the legal owners. In case of two crevices being one and the same lode.

1804. SEC. 8. In no case shall any person or persons be allowed to flood the property of another person with water, or wash down the tailings of his or their sluice upon Responsibility for damages done by water.

the claim or property of other persons, but it shall be the duty of every miner to take care of his own tailings, upon his own property, or become responsible for all damages that may arise therefrom.

Right of way for hauling quartz.

1805. SEC. 9. Every miner shall have the right of way across any and all claims for the purpose of hauling quartz from his claim.

Claims taken and recorded by enlisted men of the army or volunteer forces.

1806. SEC. 10. All claims taken up and recorded by persons who have, since the recording of the same, enlisted in the army of the United States, or the volunteer force of this state, shall be deemed and held as real estate for a period of two years from the expiration of their term of enlistment or discharge from service; after which time, if not represented by the said soldier or soldiers, all such claims shall be forfeited to any person who may take up the same.

Records, laws, etc., of mining districts, to be filed in county clerk's office; certified copies to be evidence.

1807. SEC. 11. A copy of all the records, laws and proceedings of each mining district, so far as they relate to lode-claims, shall be filed in the office of the county clerk of the county in which the district is situated, within the boundaries of the district attached to the same, which shall be taken as evidence in any court having jurisdiction in the matters concerned in such record or proceeding; and all such records of deeds and conveyances, laws and proceedings of any mining district heretofore filed in the clerk's office of the proper county, and transcripts thereof duly certified, whether such record relate to gulch-claims, lode-claims, building-lots, or other real estate, shall have the like effect as evidence.

AN ACT FOR THE RELIEF OF PRE-EMPTORS AND LOCATORS OF VEINS OR LODES OF QUARTZ OR OTHER ROCK ON THE MINERAL LANDS OF THE PUBLIC DOMAIN.

[Session Laws, 1870.]

Location and right to obtain patents under act of congress, July 26, 1866.

1808. SECTION 1. No statutory law of the state of Colorado, shall be so construed as to prohibit the location of three thousand feet or less on any vein or lode in the manner prescribed in section four of an act of congress, approved, July twenty-sixth, one thousand eight hundred

and sixty-six, entitled "An Act granting the right of way to ditch and canal owners over the public lands," and for other purposes; nor to prejudice any rights to obtain patents for the same, as provided in said act.

Validity of pre emptions and locations since said act.

1809. SEC. 2. All pre-emptions and locations of three thousand feet, or less, on any vein, lode or ledge made since the passage of the said act of congress, and conforming to the same, shall be good and valid.

Prior rights.

1810. SEC. 3. Nothing in this act shall be so construed as to prejudice any rights acquired prior to the passage of this act.

AN ACT CONCERNING MINES.

[Session Laws, 1874.]

Length of claim.

1811. SECTION 1. The length of any lode claim hereafter located may equal but not exceed fifteen hundred feet along the vein.

Width of claims defined.

1812. SEC. 2. The width of lode claims hereafter located in Gilpin, Clear Creek, Boulder and Summit counties, shall be seventy-five feet on each side of the centre of the vein or crevice; and in all other counties the width of the same shall be one hundred and fifty feet on each side of the centre of the vein or crevice: *Provided*, that hereafter any county may at any general election, determine upon a greater width not exceeding three hundred feet on each side of the centre of the vein or lode, by a majority of the legal votes cast at said election, and any county by such vote at such election may determine upon a less width than above specified.

Recording of location certificate.

1813. SEC. 3. The discoverer of a lode shall within three months from the date of discovery, record his claim in the office of the recorder of the county in which such lode is situated, by a location certificate which shall contain:

First—The name of the lode.

Second—The name of the locator.

Third—The date of location.

Fourth—The number of feet in length claimed on each side of the centre of discovery shaft.

Fifth—The general course of the lode as near as may be.

Character of location certificate.

1814. SEC. 4. Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the general course of the lode, and such description as shall identify the claim with reasonable certainty shall be void.

Improvement and identification of claims.

1815. SEC. 5. Before filing such location certificate, the discoverer shall locate his claim by:

First—Sinking a discovery shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper, if necessary to show a well defined crevice.

Second—By posting at the point of discovery on the surface, a plain sign or notice containing the name of the lode, the name of the locator, and the date of discovery.

Third—By marking the surface boundaries of the claim.

Surface boundaries; how marked. (Amendment 1876.)

1816. SEC. 6. Such surface boundaries shall be marked by six substantial posts hewed or marked on the side or sides which are in toward the claim, and sunk in the ground to wit: one at each corner and one at the centre of each side line. Where it is practically impossible on account of bed rock to sink such posts, they may be placed in a pile of stones, and where in marking the surface boundaries of a claim any one or more of such posts shall fall by right upon precipitous ground, where the proper placing of it is impracticable or dangerous to life or limb, it shall be legal and valid to place any such post, at the nearest practicable point, suitably marked to designate the proper place.

How lodes may be held other than by sinking of discovery shaft.

1817. SEC. 7. Any open cut, cross-cut or tunnel which shall cut a lode at the depth of ten feet below the surface, shall hold such lode, the same as if a discovery shaft were sunk thereon, or an adit of at least ten feet in along the lode from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.

Within what time discovery shaft to be sunk.

1818. SEC. 8. The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery shaft thereon.

1819. SEC. 9. The location, or location certificate of

What location shall be construed to include

any lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended downward, vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

When lode not to be followed beyond exterior lines.

1820. SEC. 10. If the top or apex of a lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior lines.

Right of way for ditches and flumes.

1821. SEC. 11. All mining claims now located, or which may be hereafter located, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tramway or pack trail, whether now in use or which may be hereafter laid out across any such location; *provided, always*, that such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tramway or pack trail, without consent of the owner, except by condemnation as in case of land taken for public highways. Parol consent to the location of any such easement accompanied by the completion of the same over the claim shall be sufficient without writings; *and provided further*, that such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.

When miners may be enjoined from working.

1822. SEC. 12. When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.

1823. SEC. 13. If at any time the locator of any min-

Regulating proceedings where certificates are erroneous or defective.

ing claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law and he shall be desirous of securing the benefits of this act, such locator, or his assigns, may file an additional certificate, subject to the provisions of this act. *Provided*, that such re-location does not interfere with the existing rights of others at the time of such re-location, and no such re-location or other record thereof, shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous location.

Affidavit of work and improvements.

1824. SEC. 14. Within six months after any set time or annual period allowed for the performance of labor, or making improvements upon any lode claim, the person on whose behalf such outlay was made, or some person for him, shall make and record an affidavit, in substance as follows:

STATE OF COLORADO, }
———— COUNTY, } SS.

Before me, the subscriber, personally appeared ————, who being duly sworn, saith that at least — —— dollars' worth of work or improvements were performed or made upon (here describe claim or part of claim) situate in ——— mining district, county of ———, state of Colorado. Such expenditure was made by or at the expense of ————, owners of said claim, for the purpose of holding said claim.

(Jurat) Signature.

And such signature shall be *prima facie* evidence of the performance of such labor.

Manner of relocating abandoned claims.

1825. SEC. 15. The re-location of abandoned lode claims shall be by sinking a new discovery shaft, and fixing new boundaries in the same manner as if it were the location of a new claim; or the re-locator may sink the original discovery shaft ten feet deeper than it was at the time of abandonment, and erect new, or adopt the old

boundaries, renewing the posts if removed or destroyed. In either case a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate may state that the whole or any part of the new location is located as abandoned property.

1826. SEC. 16. No location certificate shall claim more than one location, whether the location be made by one or several locators. And if it purport to claim more than one location, it shall be absolutely void, except as to the first location therein described, and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all.

No certificate to cover more than one location.

AN ACT CONCERNING MINES.

[Session Laws, 1874.]

1827. SECTION 1. In all actions pending in any district court of this state wherein the title or right of possession to any mining claim shall be in dispute, the said court, or the judge thereof, may upon application of any of the parties to such suit, enter an order for the underground, as well as surface survey, of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not related to any of the parties to such suit, or in anywise interested in the result of the same, and upon the application of the party adverse to such application the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it shall be to attend upon such survey and observe the method of making the same; said second surveyor to be at the cost of the party asking therefor. It shall also be lawful in such order to specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, who shall hereupon be allowed to enter into such property and examine the same. Said court or the judge thereof may also cause the removal of any rock, debris or other obstacle in any of the drifts or shafts of said

Actions where title or possession is in dispute —how commenced. Survey of premises.

property, when such removal is shown to be necessary to a just determination of the questions involved; *provided, however*, that no such order shall be made for survey and inspection except in open court or in chambers, upon notice of application for such order of at least six days, and not then except by agreement of parties, or upon the affidavit of two or more persons, that such survey and inspection is necessary to the just determination of the suit, which affidavits shall state the facts in such case, and wherein the necessity for survey exists, nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party.

Concerning the dispossession of parties by violence.

1828. SEC. 2. In all cases where two or more persons shall associate themselves together for the purpose of obtaining the possession of any lode, gulch or placer claim, then in the actual possession of another, by force and violence or threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats against the party or parties in possession, or who shall enter upon such lode or mining claim for the purpose aforesaid, or who shall enter upon or into any lode, gulch, placer claim, quartz mill, or other mining property, or not being upon such property, but within hearing of the same, shall make any threats, or make use of any language, signs or gestures, calculated to intimidate any person or persons at work on said property from continuing to work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending shall, on conviction thereof, be fined in a sum not to exceed two hundred and fifty dollars, and be imprisoned in the county jail not less [than] thirty days nor more than six months, such fine to be discharged either by payment or by confinement in said jail until such fine is discharged at the rate of two dollars and fifty cents per day. On trials under this section, proof of a common purpose of two or more persons to obtain possession of property as aforesaid, or to intimidate laborers as above set forth, accompanied or followed by any of the acts above specified by any of them, shall be sufficient evidence to convict any one committing such

Penalty.

Character of evidence required to convict.

acts, although the parties may not be associated together at the time of committing the same.

Killing of person on entry or attempted entry of mine by force of numbers, deemed and punished as murder in the first degree.

1829. SEC. 3. If any person or persons shall associate and agree to enter or attempt to enter by force of numbers, and the terror such number is calculated to inspire, or by force and violence, or by threats of violence, against any person or persons in the actual possession of any lode, gulch or placer claim, and upon such entry or attempted entry, any person or persons shall be killed, said persons, and all and each of them so entering or attempting to enter, shall be deemed guilty of murder in the first degree, and punished accordingly. Upon the trials of such cases any person or parties cognizant of such entry, or attempted entry, who shall either be present, aiding and assisting, or shall by promise of money, property, influence, assistance, or other thing of value, in any wise encourage such entry or attempted entry, shall be deemed a principal in the commission of said offense.

Persons cognizant of, or aiding, abetting, etc., deemed principals.

AN ACT TO PROVIDE FOR THE DRAINAGE OF MINES, AND TO REGULATE THE LIABILITIES OF MINERS, MINE OWNERS AND MILL MEN IN CERTAIN CASES, AND TO REPEAL ALL TERRITORIAL ACTS ON THE SUBJECT.

Be it enacted by the General Assembly of the State of Colorado:

Drainage by owners or occupants of contiguous or adjacent mines.

1830. SECTION 1. Whenever contiguous or adjacent mines upon the same or upon separate lodes, have a common ingress of water, or from subterraneous communication of the water, have a common drainage, it shall be the duty of the owners, lessees or occupants of each mine so related, to provide for their proportionate share of the drainage thereof.

Recovery of proportionate share of actual cost from parties failing to provide therefor.

1831. SEC. 2. Any parties so related, failing to provide as aforesaid, for the drainage of the mines owned or occupied by them, thereby imposing an unjust burden upon neighboring mines, whether owned or occupied by them, shall pay respectively to those performing the work of drainage, their proportion of the actual and necessary cost and expense of doing such drainage, to be recovered by an action in any court of competent jurisdiction.

Incorporation for purpose of drainage.

1832. SEC. 3. It shall be lawful for all mining corporations or companies, and all individuals engaged in mining, having thus a common interest in draining such mines, to unite for the purpose of effecting the same, under such common name and upon such terms and conditions as may be agreed upon; and every such association, having filed a certificate of incorporation, as provided by law, shall be deemed a corporation, with all the rights, incidents, and liabilties of a body corporate, so far as the same may be applicable.

Proceedings in case of failure of parties to agree.

1833. SEC. 4. Failing to mutually agree as indicated in the preceeding section for drainage, jointly, one or more of the said parties may undertake the work of drainage, after giving reasonable notice; and should the remaining parties then fail, neglect or refuse to unite in equitable arrangments for doing the work, or sharing the expense thereof, they shall be subject to an action therefor as already specified, to be enforced in any court of competent jurisdiction.

Inspection and examination of mines in case of suit for recovery of cost of drainage; how to be made.

1834. SEC. 5. When an action is commenced to recover the cost and expenses for draining a lode or mine, it shall be lawful for the plaintiff to apply to the court, if in session, or to the judge thereof in vacation, for an order to inspect and examine the lodes or mines claimed to have been drained by the plaintiff; or some one for him, shall make affidavit that such inspection or examination is necessary for a proper preparation of the case for trial. The court or judge shall grant an order for the under-ground inspection and examination of the lode or mines described in the petition. Such order shall designate the number of persons, not exceeding three, besides the plaintiff or his representative, to examine and inspect such lode and mines, and take the measurement thereof, relating the amount of water drained from the lode or mine, or the number of fathoms of ground mined and worked out of the lode or mines claimed to have been drained, the cost of such examination and inspection to be borne by the party applying therefor. The court or judge shall have power to cause the removal of any rock, debris, or other obstacles in any lode or vein, when such removal is shown to be necessary

to a just determination of the question involved; *provided*, that no such order for inspection and examination shall be made, except in open court or at chambers, upon notice of application for such order of at least three days, and not then except by agreement of parties, nor unless it appears that the plaintiff has been refused the privilege of making the inspection and examination by the defendant, his or their agent.

Use of water hoisted from mines and flowing into natural channels.

1835. SEC. 6. That hereafter, when any person or persons, or corporation, shall be engaged in mining or milling, and in the prosecution of such business shall hoist or raise water from mines or natural channels, and the same shall flow away from the premises of such persons or corporations, to any natural channel or gulch, the same shall be considered beyond the control of the party so hoisting or raising the same, and may be taken and used by other parties the same as that of natural water courses.

Liability for damage caused by water raised from mines and flowing into natural channels.

1836. SEC. 7. After any such water shall have been so raised, and the same shall have flown into any such natural channel, gulch or draw; the party so hoisting or raising the same shall only be liable for injury caused thereby, in the same manner as riparian owners along natural water courses.

No application to undeveloped mines.

1837. SEC. 8. The provisions of this act shall not be construed to apply to incipient or undeveloped mines, but to those only which shall have been opened, and shall clearly derive a benefit from being drained.

What evidence admissable in suits under this act.

1838. SEC. 9. In trial of cases arising under this act the court shall admit evidence of the normal stand, or position of the water while at rest in an idle mine, also the observed prevalence of a common water level or a standing water line in the same, or separate lodes; also, the effect (if any) the elevating or depressing the water by natural or mechanical means in any given lode, has upon elevating or depressing the water in the same, contiguous or separate lodes or mine; also, the effect which draining or ceasing to drain any given lode or mine had upon the water in the same or contiguous or separate lodes or mines, and all other evidence which tends to prove the common ingress or sub-

terraneous communication of water into the same lode or mine, or contiguous or separate lodes or mines.

Approved, March 16, 1877.

CHAPTER LXVII.

MISCELLANEOUS LAWS.

AN ACT TO ENABLE COUNTIES TO PROVIDE WATER FOR MINING, MILLING, IRRIGATING, DOMESTIC AND FIRE PURPOSES.

[Session Laws, 1874.]

Subscription to stock and issue of bonds by counties authorized.

1839. SECTION 1. It shall be lawful for the board of commissioners of any county in this state, to subscribe to the capital stock of any incorporated company organized under the laws of this state, for the purpose of constructing ditches, flumes or other works for the supply of such county with water for mining, milling, irrigating and domestic and fire purposes, such subscription to be paid by the issue of the bonds of said county, as hereinafter provided.

Proceedings necessary to obtain aid from counties; calling of special election.

1840. SEC. 2. Whenever any such incorporated company shall solicit the aid of such county by subscription to its capital stock, it shall submit to the board of county commissioners a statement in writing, to be filed in the office of the county clerk of such county, setting forth the source from which water is to be obtained, and the proposed capacity of the ditch, flume or pipes by which the water is to be brought, together with the number and size of the reservoirs to be constructed, and the route, as near as practicable, over which the same is to be brought, the estimated cost of the said works when completed, and the rates at which they agree to furnish water for the purposes above set forth, for the first three years after the same is in operation. Such statement shall also be accompanied with a petition of at least fifty legal voters of said county, who shall have paid taxes on property, real or personal, in said county during the year preceding that in which such petition is drawn, requesting said board to call an election in said county upon the ques-

tion of the issue of the bonds of such county in aid of said company, in payment of the proposed subscription to the capital stock of said company. Upon the receipt of such statement and petition, the said board of county commissioners shall, thereupon, within ten days thereafter, call a special election upon such question, and enter an order on their journal therefor. Such election shall be upon notice published in some newspaper published in said county, for at least three weeks before the day named therein, upon which the vote shall be taken, or if there is no newspaper published in such county, then by putting notices at the usual place of voting in the different precincts of said county for the same period. Said notice shall contain the statement of the said company as above prescribed, together with the terms and conditions upon which such stock is to be subscribed, and the bonds issued, and any other matters necessary to a fair, impartial and intelligent expression of the will of the voters of such county upon the question submitted, which question shall be as to the subscription to the capital stock of said company, and the issuance of the bonds of said county in payment thereof. Such notice shall also state the time which such bonds shall run, the rate of interest they shall bear, and the manner in which they shall be paid.

Manner of issuance of bonds.

1841. SEC. 3. If a two-thirds majority of all votes cast at such election shall be in favor of the subscription to said stock, and the issuance of such bonds, it shall be the duty of the said board of county commissioners to subscribe said stock and issue said bonds of said county, and to exchange the same at the par value for the stock of said company, at its par value. *Provided*, that no bonds shall be issued bearing interest at a rate exceeding ten per cent. per annum, *and provided, further*, that no bonds shall be issued, due and payable until fifteen years after the date thereof, except at the option of the said board of county commissioners of such county, after five years from date thereof.

1842. SEC. 4. The board of county commissioners of any such county shall have power to levy a special tax, to be paid in cash, of not to exceed three mills on each and every dollar of property assessed and liable to taxation in

Levy of special tax for payment of principal and interest of bonds

such county, each year, for the payment of the interest annually on such bonds, and at the end of five years it shall be the duty of such board to levy a tax not exceeding five mills on the assessed value of the property in said county, for each and every year, for the payment of the interest and principal of said bonds, and all moneys applicable to the payment of the principal of said bonds shall be applied to the payment thereof by the said board at the end of the fiscal year of such county. *Provided*, that the amount so levied each year shall be an amount sufficient at such rates to pay the amount of said bonds at maturity.

Discrimination in water rate.

1843. SEC. 5. No incorporated company to whose stock any county has subscribed, shall make any discriminating rates against or in favor of any person or corporation, or charge one person or corporation more for a given amount of water for a given purpose, than another, except that in cases where a small quantity of water only is required, it shall be lawful for the company to make such charges as may be just and reasonable, without regard to the rates fixed for other purposes and in larger amounts.

Exchange of stock for bonds.

1844. SEC. 6. It shall be lawful, at any time after three years from the date of any bonds issued under the provisions of this act, for the board of county commissioners of any county to exchange the stock so held and subscribed by said county, for the bonds of the said county, such stock to be exchanged at its par value, and such bonds taken at their par value.

Limitation of amount of bonds issued

1845. SEC. 7. The amount of bonds issued by any county under the provisions of this act, shall in no case exceed four per cent. of the assessed value of the property situate in said county, for the year preceeding that in which such bonds are voted.

Not applicable to Arapahoe county.

1846. SEC. 8. The provisions of this act shall not apply to Arapahoe county.

AN ACT CONCERNING THE RELEASE OF MORTGAGES.

[Session Laws, 1874.]

1847. SECTION 1. That when the mortgagee of any property within the state shall have received payment of

the money due to him, and secured by the mortgages, and shall have entered or may hereafter enter satisfaction or a receipt for the same, either on the mortgage or on the record of the mortgage, such satisfaction or receipt so recorded shall operate and be taken to release the said mortgage to whoever may be entitled to a release, and shall re-convey the title of any property in any mortgage to whoever may be entitled to receive the same as fully as a release deed would have done, executed under the formalities prescribed by the law regulating conveyances.

Entry of satisfaction or receipt on mortgage or record thereof, to operate as a release and re-conveyance of title.

1848. SEC. 2. That all releases heretofore made upon the records of mortgages in this state, and signed by the mortgagee, are hereby legalized and made of the same effect in re-conveying real estate from the said mortgagee to whoever was entitled to receive the same, as a release legally executed by the said mortgagee would have been.

Releases heretofore made on records and signed by mortgagee, legalized.

1849. SEC. 3. That the clerk and recorder of each county, when hereafter recording a mortgage, shall leave a space on the margin of the record for the entry of satisfaction, and shall record therein the satisfaction made on said mortgage, or permit the mortgagee to enter therein the satisfaction of said mortgage, which record shall have the same force and effect as the record of a release deed of said mortgagee; and the clerk and recorder shall be entitled to demand and receive the sum of fifty cents for recording such satisfaction of a mortgage, or permitting the same to be recorded as aforesaid by the mortgagee.

Space to be left in records for entry of satisfaction; fees of recorder for entry of satisfaction.

AN ACT IN REGARD TO A CHANGE OF NAMES.

[Session Laws, 1876.]

1850. SECTION 1. Every person desiring to change his or her name, may present a petition to that effect, verified by affidavit, to the district or county court, in the county of the petitioner's residence, which petition shall set forth the petitioner's full name, the new name desired, and a concise statement of the reason for such desired change; and it shall be the duty of the judge of such court to order such change to be made, and spread upon

Proceedings necessary to change of name.

the records of the court in proper form, if such judge is satisfied that the desired change would be proper, and not detrimental to the interests of any other person.

What notice shall be given.

1851. SEC. 2. Public notice of such change of name shall be given at least three times in a newspaper published in the county where such person is residing, within twenty days after the order of court is made, and if no newspaper is published in that county, such notice shall be published in a newspaper in such county as the judge of said court shall direct.

AN ACT CONCERNING THE TRANSPORTATION OF NITRO GLYCERINE AND OTHER COMBUSTIBLE AND EXPLOSIVE ARTICLES.

[Session Laws, 1876.]

What articles shall not be transported in vehicles or trains of cars used for transportation of passengers.

1852. SECTION 1. It shall not be lawful to transport, carry or convey, or deliver to be transported, carried or conveyed, or to cause to be delivered to be transported, carried or conveyed, any of the substances or articles known as dynamite, nitro glycerine, or glycerine oil, nitroleum or blasting oil, or nitrated oil, or powder mixed with any such oil, or fiber saturated with any such article or substance, in any vehicle used or employed in transporting passengers, or in any train of cars, used in transporting passengers; *provided*, that an ordinary freight train, with a caboose or passenger car used as a caboose, shall not be construed as a train of cars, used in transporting passengers, within the meaning of this act.

In what manner nitro-glycerine may be transported.

1853. SEC. 2. It shall not be lawful to ship, send or forward any quantity of the substances or articles named in the preceeding section or to transport, convey or carry the same, on any vehicle of any description, or to deliver the same to be transported, carried or conveyed, or to cause to be delivered to be transported, carried or conveyed, any such articles or substances, unless the same shall be securely enclosed, deposited or packed in a metallic vessel surrounded by plaster of paris or other material that will be non-explosive when saturated with such oil or substance, and separate from all other substances, and the out-side of the package containing the same, be marked

or labelled in a conspicuous manner with the words, "nitro glycerine—dangerous."

1854. SEC. 3. If any person or persons shall knowingly violate any of the provisions of the preceding sections, they shall be deemed guilty of a misdemeanor and punished by a fine of not more than five thousand dollars, or by imprisonment in the penitentiary not exceeding two years, or both. Penalty for violations of this act.

1855. SEC. 4. When the death of any person is caused by the explosion of any of the articles or substances named in the first section of this act, while the same is being delivered to any carrier, or while the same is being transported, or is being removed from the vehicle on which it has been transported or conveyed, or on which it has been placed for transportation, every person who knowingly and unlawfully placed, or aided, or permitted the placing of such article or substance on such vehicle, or delivered the same, or caused the same to be delivered, contrary to the provisions of this act, shall be deemed guilty of manslaughter, and shall suffer imprisonment in the penitentiary for a period of not less than two years, and not more than ten years. Punishment in case of death occurring from transportation or delivery of nitro-glycerine, etc.

AN ACT CONCERNING THE FLOATING OF TIMBER ON THE STREAMS OF THIS STATE.

[Session Laws, 1872.]

1856. SECTION 1. That it shall and may be lawful for any person or persons to float any and all kinds of timber, such as saw logs, ties, fencing poles or posts, and fire-wood, down any of the streams of this state; *provided*, that any person or persons desiring to float any such timber down said streams, shall first execute a bond running to the people of each county through which such timber is to be floated, in a sum sufficient to cover all damages that may be done to any bridges, dams or irrigating ditches that are now or may hereafter be constructed in or across any streams of this state; such bonds to be approved by the board of county commissioners of the county or counties through which such timber is to be floated. Execution of bond to cover damages to bridges, dams or ditches.

AN ACT TO PREVENT CRUELTY TO ANIMALS.

[Session Laws, 1872.]

Punishment for cruelty to animals

1857. SECTION 1. If any person shall over-drive, overload, torture, torment, deprive of necessary sustenance or unnecessarily or cruelly beat, or needlessly mutilate or kill, or cause or procure to be over-driven, over-loaded, tortured, tormented, or deprived of necessary sustenance, or to be unnecessarily or cruelly beaten, or needlessly mutilated or killed, as aforesaid, any living creature, every offender shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

Penalty for failure to feed impounded animals.

1858. SEC. 2. Any person who shall impound, or cause to be impounded in any pound or corral, under the laws of this state, any creature, shall supply to the same, during such confinement, a sufficient quantity of good and wholesome food and water, and in default thereof, shall, upon conviction, be punished by imprisonment in a county jail not to exceed ten days, or by a fine not exceeding fifty dollars, or by both such fine and imprisonment.

Any person may feed neglected impounded animals.

1859. SEC. 3. In case any creature shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person, from time to time, and as often as it shall be necessary, to enter into and upon any pound, in which any such creature shall be so confined, and to supply it with necessary food and water so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost of food and water may be collected by him of the owner of such creature, and the said creature shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

Penalty for carrying animals in vehicles in an inhuman manner.

1860. SEC. 4. If any person shall carry or cause to be carried, in or upon any vehicle or otherwise, any creature, in a cruel or inhuman manner, he shall be guilty of a misdemeanor, and whenever he shall be taken into custody therefor by any officer, such officer may take charge of such vehicle and its contents, and deposit the same in some

safe place of custody; and any necessary expenses which may be incurred for taking charge of and keeping and sustaining the same, shall be a lien thereon, to be paid before the same can be lawfully recovered. Or the said expenses, or any part thereof remaining unpaid, may be recovered by the person incurring the same of the owner of said creature, in any action therefor.

Abandonment of animals to die in public places, deemed misdemeanor; duty of magistrate in such cases.

1861. SEC. 5. If any maimed, sick, infirm or disabled creature shall be abandoned to die, by any person, in any public place within the limits of any incorporated town or city within the state of Colorado, such person shall be guilty of a misdemeanor, and it shall be lawful for any magistrate in this state to appoint suitable persons to destroy such creature, if unfit for further use.

Arrests by agents of society for prevention of cruelty to animals; disposition of fines collected under this act.

1862. SEC. 6. Any agent of the Colorado society for the prevention of cruelty to animals, upon being designated thereto by the sheriff of any county in this state, may within such county, make arrests and bring before any court or magistrate thereof having jurisdiction, offenders found violating the provisions of this act, and all fines imposed and collected in any such county under the provisions of this act, shall inure to said society, in aid of the benevolent objects for which it was incorporated.

Liability to penalty of police officer or constable for refusal or neglect to carry out the provisions of this act.

1863. SEC. 7. The police force of the city of Denver, as well as of all other places where police organizations exist, shall, as occasion may require, aid the society, its members or agents, in the enforcement of all laws which are now or may hereafter be enacted for the protection of dumb animals, and any constable or police officer who shall knowingly or wilfully neglect or refuse to carry out the provisions of this act, shall be liable to such penalties as are now or may hereafter be imposed for neglect of duty under the general laws of the state, or municipal ordinance of the town or city in which the offense may be committed.

AN ACT CONCERNING UNCLAIMED FREIGHT.

[Session Laws, 1874.]

1864. SECTION 1. When any goods, merchandise, or other property shall have been received by any railroad,

Owners and consignees to be notified.

or express company, or other common carrier, commission merchants, or warehousemen, and shall not be received by the owner, consignee, or other authorized person, until the expiration of thirty days, it shall be lawful for the said carrier, commission merchant, or warehousemen to hold the same, or the same may be stored, with some responsible person, and be retained until the freight and storage, and all just and reasonable charges be paid by the owner or consignee, or by some person for him; *provided, however*, that said railroads or express companies or other common carriers, commission merchants, or warehousemen, shall notify the owners or consignees of the receipt of such goods, merchandise, or other property, within three days from the receipt thereof.

When and how unclaimed goods may be sold.

1865. SEC. 2. If no person having a right thereto call for said goods, merchandise, or other property, within ninety days from the receipt thereof, and pay freight and charges thereon, it shall be lawful for such carrier, commission merchant, or warehousemen, to sell such goods, merchandise, or other property, or so much thereof, at public auction to the highest bidder, as will pay said freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee, or consignor, if known, and by advertisement in a daily paper, (or if in a weekly paper, four weeks), published where such sale is to take place; and, if any surplus be left after paying freight, storage, cost of advertising, and all other just and reasonable charges, the same shall be paid over to the rightful owner of said property at any time thereafter, upon demand being made therefor, within ninety days.

Surplus paid to county treasurer

1866. SEC. 3. If the rightful owner, or his agent, fail to demand such surplus within ninety days of the time of such sale, then such surplus shall be paid into the county treasury, subject to the order of the owner; and if the owner do not demand such money of the county treasurer within one year, then the same shall be forfeited, and paid to the general school fund of the county.

When responsibility of carrier to cease.

1867. SEC. 4. After the storage of goods, merchandise, or property, as herein provided, the responsibility of the carrier shall cease, nor shall the person with whom the

same may be stored be liable for any loss or damage, on account thereof, unless the same shall result from his negligence, or want of proper care.

Concerning advances on goods.

1868. SEC. 5. When any commission merchant or warehousemen, shall receive on consignment, or on storage, produce, merchandise, or other property, and shall make advances thereon, either to the owner, or for freight and charges, and no time be agreed upon for the repayment of the same, it shall be lawful for the person who makes such advances, if the same be not paid to him within ninety days from the date of such advances, to cause the produce, merchandise, or property on which the advances were made, to be advertised and sold as provided in the second section of this act; and if a time for the repayment of such charges be agreed upon, then such notice of sale may be made immediately upon default of such payment.

Perishable goods—how disposed of.

1869. SEC. 6. In case the goods, merchandise, or other property, referred to in the preceding sections, shall consist of articles which will perish, or become greatly damaged by delay in disposing of the same, then it shall be lawful for such carrier, commission merchant, or warehouseman, unless the charges on such goods are paid, and they are claimed and taken away, to sell all of the same, either at auction, or private sale, for the best price that may reasonably be obtained therefor, and to dispose of the proceeds of such sale as provided in section two of this act; *provided, always*, that before any such sale is made, notice shall be given to the owner, or consignee, or agent of him, of the intent to so sell and dispose of such goods, merchandise, or other property, and the time and place of such sale, either by personal notice, or by letter addressed and properly mailed to him, which said notice shall be given at least twenty-four hours before said sale, if the consignee, or owner, or agent of him, so notified shall reside at the place where such goods are; but if the person to be so notified of such sale reside at a distance, then the time of such sale shall be so appointed in such notice as to allow him, in addition to the twenty-four hours above mentioned, a reasonable length of time to claim such goods, or to attend such sale; and, if upon reasonable inquiry, the

residence of such consignee, owner, or agent, cannot be learned, then upon the affidavit of such carrier, commission merchant, or warehouseman, or some person in his or their behalf, to be filed and preserved by the carrier, commission merchant or warehouseman, and by them to be produced and exhibited to any person claiming an interest in the goods sold, or to be sold, as aforesaid, such goods, merchandise, and other property, may be sold as aforesaid without notice.

AN ACT TO EXTEND THE RIGHT OF SUFFRAGE TO WOMEN OF LAWFUL AGE, AND OTHERWISE QUALIFIED, ACCORDING TO THE PROVISION OF THE CONSTITUTION.

Be it enacted by the General Assembly of the State of Colorado:

Right of suffrage extended to females having requisite qualifications.

1870. SECTION 1. That every female person shall be entitled to vote at all elections, in the same manner in all respects as male persons are, or shall be entitled to vote by the constitution and laws of this state, and the same qualifications as to age, citizenship, and time of residence in the state, county, city, ward and precinct; and all other qualifications required by law to entitle male persons to vote shall be required to entitle female persons to vote.

At what time section one to be submitted to vote.

1871. SEC. 2. Section one of this act shall be submitted to the vote of the qualified electors of this state for approval at the general election in the year of our Lord 1877, and shall not be of effect as a law unless the same shall be approved by a majority of the qualified electors voting thereon at said election.

Notice of the submission of section one to vote to be given by secretary of state.

1872. SEC. 3. It shall be the duty of the secretary of state in his proclamation, or notice to the electors of said general election, to give notice of the submission of said section one to the qualified electors of the state for their approval, and that those who approve the same shall have written or printed upon their ballots the words, "woman's suffrage approved," and such as do not approve the same shall have written or printed upon their ballots the words, "woman's suffrage not approved," and such notice shall be deemed and considered by all the courts of this state as a submission of said section one to the qualified electors for approval within the meaning of the constitution.

1873. SEC. 4. The words "woman's suffrage approved" found written or printed upon any ballot and legally polled at said election, shall be counted and canvassed as a vote for the approval of said section one of this act; and the words "woman's suffrage not approved," found written or printed upon any ballot, legally polled at said election, shall be counted and canvassed as a vote of disapproval of said section one. Approval or disapproval of section one; how declared.

1874. SEC. 5. The votes which shall have been polled upon such submission of said section one for approval, or against approval, as aforesaid, shall be canvassed and certified by the same officers and in the same manner and time in all respects as the votes for members of the general assembly are or then shall be required to be canvassed and certified by law; and if said section one be approved by a majority of the qualified electors voting thereon at said election in the manner aforesaid, it shall be the duty of the governor to make proclamation of the fact of such approval under the great seal of the state, and cause the same to be recorded in the records of the department of state, and published in some newspaper printed at the state capital, immediately after said votes shall have been canvassed by the board of state canvassers. Canvass of vote and proclamation of governor.

1875. SEC. 6. Section one of this act shall be of effect and in full force as a law of this state, as soon as such proclamation by the governor shall be made, and not before or otherwise. When this act to take effect.

Approved, January 29, 1877.

AN ACT TO PROVIDE FOR THE PROPER REPRESENTATION OF THE PRODUCTS AND MANUFACTURES OF THE STATE OF COLORADO AT THE PARIS EXPOSITION IN THE YEAR A. D. 1878.

Be it enacted by the General Assembly of the State of Colorado:

1876. SECTION 1. The governor shall appoint, by and with the consent of the senate, a board of commissioners to be known as the "board of commissioners for Colorado to the Paris exposition of 1878." How commissioners to be appointed.

How board constituted.

1877. SEC. 2. Said board of commissioners shall consist of three persons; the commissioner of mines in this state shall be president of said board.

Duties of president of board.

1878. SEC. 3. It shall be one of the duties of the president of said board from time to time to collect and arrange such mineralogical specimens as he may be able to secure, and to receive any and all such specimens that may be donated by any person or persons for the purpose of exhibiting the same at said exhibition.

Duties of members of board.

1879. SEC. 4. It shall be the duty of the other members of the said board to secure, by donation, specimens of the mineral products of this state, to label and box the same, and from time to time forward the same, to the office of commissioner of mines, at the capital of the state; also to secure by donation specimens of the agricultural and manufacturing industries of this state in the same manner as above named, and to encourage to the extent of their influence the obtaining of a taxidermal collection to be exhibited at the same exposition.

No compensation allowed.

1880. SEC. 5. No member of the board of commissioners shall receive any compensation for services rendered or be by the state reimbursed for expenses incurred.

Approved, February 2, 1877.

AN ACT TO PROVIDE FOR ISSUING WARRANTS BY THE AUDITOR IN PAYMENT OF RENT AND CONTINGENT EXPENSES OF THE EXECUTIVE, LEGISLATINE, AND JUDICIAL DEPARTMENTS, AND TO REPEAL ALL ACTS INCONSISTENT WITH THIS ACT.

Be it enacted by the General Assembly of the State of Colorado:

Issue of warrants in payment of rent for state buildings.

1881. SECTION 1. It shall be the duty of the secretary of state, on the application of any person or persons to whom rent of any building or buildings leased and occupied by the state for executive, judicial or legislative departments, to issue to such person or persons a certificate setting forth the amount of rent due to such person or persons, and on account of what buildings or buildings, and such certificate, when presented to the auditor, shall entitle the holder thereof to a warrant for the amount, and the auditor shall issue his warrant accordingly.

1882. SEC. 2. It shall be the duty of the secretary of state to issue a certificate for the payment of any portion of the contingent expenses of the government, properly incurred, according to law, which certificate shall be approved by the governor, and when so issued and approved, and presented to the auditor, shall entitle the holder thereof to a warrant, and the auditor shall issue his warrant accordingly. Issue of warrants for contingent expenses.

1883. SEC. 3. Inasmuch as no provision of law exists in relation to the matters aforesaid, and persons to whom the government will be indebted in manner aforesaid, will be justly entitled to warrants before the expiration of ninety days from the passage hereof, therefore it is the opinion of this general assembly that an emergency exists requiring this act to take effect without delay; therefore this act shall take effect and be in force from and after its passage. Emergency.

1884. SEC. 4. All acts or parts of acts inconsistent with this act are hereby repealed. Repeal.

Approved, February 6, 1877.

AN ACT TO AUTHORIZE THE GOVERNOR OF THE STATE TO MAKE ON THE GOVERNMENT A REQUISITION FOR ARMS, AND TO GIVE BOND FOR THE SAME.

WHEREAS, By joint resolution of the 3d of July, 1876, No. 13, the congress of the United States has authorized the issue of arms to the territories and states bordering thereon, under certain conditions, therefore

Be it enacted by the General Assembly of the State of Colorado:

1885. SECTION 1. That the governor of the state be, and is hereby authorized to issued his requisition on the general government, for the most efficient arms, for the protection of the citizens and their property against Indian raids, and to give in the name and for the state of Colorado, for the same, good and sufficient bond, and accept such conditions as may be prescribed by the general government, in accordance with the said joint resolution of congress. Requisition on general government for arms authorized.

Apportionment of arms.

1886. SEC. 2. The governor, with the advice of the military board, shall apportion such arms between the companies of the militia, organized, or to be organized in the different counties exposed to Indian raids or depredations, as it may be deemed best for their protection.

Bonds of officers and members of military companies to be given for arms.

1887. SEC. 3. The officers of the said militia companies, to whom such arms shall be issued, shall, as the military board may require and prescribe, give bond for the same to the state of Colorado, and each individual member of said companies shall give bond to his officers, for such arm or arms, that he shall receive for service.

Emergency

1888. SEC. 4. Inasmuch as this act relates to a measure of public safety, it is the opinion of this general assembly that an emergency exists, therefore it shall take effect immediately after its passage.

Approved, March 7, 1877.

AN ACT TO PROVIDE FOR THE APPOINTMENT OF COMMISSION TO REPORT A PLAN OF ORGANIZATION FOR A STATE REPORM SCHOOL.

Be it enacted by the General Assembly of the State of Colorado:

Plan for the organization and operation of state reform school.

1889. SECTION 1. It shall be the duty of the state board of education to collect facts and statistics relative to the plan of organization and the practical workings of reform schools now in operation in different states. When they shall have collected these facts and statistics, they shall adopt such plan for the organization and operation of a state reform school as in their opinion is best adapted for the wants of the state; and this plan in detail, together with such legislation as in their opinion is necessary, they shall report to the governor, to be by him submitted to the next general assembly of the state.

Approved, March 14, 1877.

CHAPTER LXVIII.

MUTE AND BLIND INSTITUTE.

AN ACT TO CREATE AN INSTITUTE FOR THE EDUCATION OF THE MUTE AND BLIND; PROVIDE FOR ITS SUPPORT AND MANAGEMENT, AND REPEAL ALL LAWS FOR THE ORGANIZATION, MANAGEMENT AND MAINTENANCE OF THE INSTITUTE FOR THE EDUCATION OF MUTES.

Be it enacted by the General Assembly of the State of Colorado:

Repeal of laws concerning the institute for the education of mutes.

1890. SECTION 1. That all of the existing laws providing for the organization, management and maintenance of the institute for the education of mutes of the state of Colorado, be and the same are hereby repealed.

Establishment of mute and blind institute.

1891. SEC. 2. There shall be permanently maintained at the city of Colorado Springs, in the county of El Paso, an institution for the support and education of the mute and blind residing within the state of Colorado.

Incorporation.

1892. SEC. 3. Such institute shall be a body corporate, under the name of "institute for the education of the mute and blind;" may sue and be sued, may take and hold real estate by gift, devise or otherwise, for the use and benefit of such institute.

Appointment of trustees.

1893. SEC. 4. Said institution shall be under the supervision of a board of trustees, consisting of three persons, who shall be appointed by the governor, with the advice and consent of the senate. Said trustees shall hold office for two years, and until their successors are appointed and qualified.

Organization of board of trustees.

1894. SEC. 5. Said trustees shall meet at the city of Colorado Springs within one month from the date of their appointment, for the purpose of organization. They shall choose one of their number to act as president, another as treasurer, and a third as secretary of the board, any two of whom shall constitute a quorum for the transaction of business.

Oath of members of the board; duties; bond of treasurer.

1895. SEC. 6. Each member of said board shall, before entering upon his duties, take and subscribe an oath to support the constitution of the United States and the state of Colorado, and faithfully discharge the duties required of him by the provisions of this act. The president shall preside over the meetings of the board when present; sign,

with the secretary, all orders on the treasurer, and perform such other duties as may be delegated to him by the board. The secretary shall keep a correct record of the proceedings of the board, and have charge of, in trust for the institution, all papers, records and accounts of the same, except such as are needed by the treasurer and officers of the institution, for their immediate use in the discharge of their duties; he shall also draw and sign, with the president, all orders on the treasurer. And the treasurer shall keep, and have charge of in trust, for said institution, all funds and immediate accounts of funds of the same. He shall pay, on order of the board, all accounts by them allowed, and shall quarterly certify to said board the receipts and disbursements by him made during the preceding quarter. Said treasurer shall be, and is hereby required, to give bonds to the state in the sum of twenty thousand dollars, with good and sufficient securities for the same, to be approved by the governor and attorney general, and filed in the office of the secretary of state. Upon the filing of said bond, as aforesaid, he shall be entitled to a certificate from the secretary of state, certifying that the same, as approved, has been filed in said office. Which certificate shall be filed in the office of the auditor of state, and no other or further certificate concerning said bond shall be required by the auditor, in issuing warrants, upon the presentation of drafts by the treasurer.

Certificate of secretary of state of filing of bond, sufficient authority to auditor of state in honoring drafts of treasurer.

1896. SEC. 7. Said board shall have the general supervision of the institute, adopt rules for the government thereof, employ officers and teachers, provide necessaries for the same, and perform all other acts essential to render it efficient, and carry out the purposes of its establishment. They shall meet quarterly and audit all accounts which may be presented to them, and require orders to be drawn and signed, on the treasurer, for all such accounts as are allowed. They shall examine all accounts of the treasurer, secretary, and officers of said institute, and shall make full and adequate provision for the support, regulation and government of the same, during the ensuing quarter. They shall have power to meet at any time, on call of the president, or of two of the members.

Duties of the board in relation to the supervision of the institute.

1897. SEC. 8. The members of said board shall each receive an annual salary of one hundred and fifty dollars, such salaries to be paid quarterly, out of the general fund provided by law for the support of said institute. Salary of members of the board.

1898. SEC. 9. The officers of said institute shall be a principal of the educational department, superintendent of the domestic department, and matron. The principal of the educational department shall receive an annual salary, not exceeding fifteen hundred dollars. The superintendent of the domestic department, and matron, shall receive an annual salary, not exceding six hundred dollars each. Designation and salaries of officers of the institute.

1899. SEC. 10. The principal shall be a non-resident officer of the institute. He shall annually certify to the board, a written report, stating in full the true condition of the educational department of the institute of which he shall have control, and of his action and proceedings therein as such principal. He shall keep and have charge of the necessary records, register and accounts of said department, have supervision of its teachers and pupils, and perform such other duties in said department as the board may direct. Duties of principal.

1900. SEC. 11. The superintendent of the domestic department shall be a resident officer of said institute. He shall quarterly certify a full and written report of all his expenditures, actions and proceedings as such officer. He shall have charge of such portion of the house as may be occupied by the male pupils exclusively. He shall have control of the expenditures, and secure and employ all assistants needed therein, with the consent and approval of the board. He shall have special charge and control of the male pupils out of school hours, and shall furnish them with, and instruct them in, employment about the premises or in some trade to which they are adapted. The products and proceeds arising from the labor and employments of all the pupils, shall inure to the use and benefit of the institute. Duties of superintendent of domestic department.

1901. SEC. 12. The matron of said institute shall also be a resident officer of the same. She shall quarterly certify a written report, in regard to the condition of all the pupils of the institute, stating in full her action and pro- Duties of matron.

ceedings as such matron. She shall have control of the internal management of the house and of the female pupils of the school out of school hours, and shall instruct them in and about the house and the domestic department, or in some trade to which they are adapted.

Who may be admitted as pupils; what payments to be made by parents of those able.

1902. SEC. 13. Every blind or deaf and dumb citizen of the state, over four and under twenty-two years of age, shall be entitled to receive an education in said institute at the expense of the state. All applicants above the age of twenty-two years may be admitted at the option of the board. *Provided*, that the mute and the blind whose parents are able, shall pay into the treasury of said institute a reasonable sum quarterly, for the right to the privileges of the domestic department thereof; said sum to be determined by the board of trustees. Each county superintendent of common schools shall report on the first day of June in each year, to the president of the board of trustees of the institute for the education of the mute and blind, the name, age, and post office address of every blind and deaf and dumb person of suitable age for admission to said institute residing in his county, including all such persons as may be too deaf to acquire an education in the common school.

County superintendents of schools to report names of mute and blind.

Annual report by president of board of trustees: what to contain.

1903. SEC. 14. The president of the board of trustees shall, on or before the tenth day of December, in each year, make out and forward to the governor of the state, a full and complete report as follows, to wit:

First—A statement of the financial condition of the institute, from date of last report, giving in detail the amount of moneys received from all sources, and the amount expended.

Second—The value of the real estate at date of report, and costs of improvements made, if any, since last report.

Third—The number of pupils in attendance, also number that have entered the institute, and the number of those who may have left it since last report.

Fourth—The number of deaths, if any, that have occurred in the institute since last report.

Fifth—The improvement, health and discipline of the pupils.

Sixth—The number of officers and teachers employed, with the salary of each.

Seventh—All other needful information touching every point that may be deemed of interest to be communicated.

Transfer of institute for the education of mutes, books, property, etc.

1904. SEC. 15. That immediately upon the appointment and organization of the board of trustees, as provided for in sections 4, 5 and 6, of this act, the present trustees of the institute for the education of mutes shall transfer to said board the entire control of said institute, together with any and all books, property and papers in their possession, belonging to, or in anywise connected with the same.

Levy and collection of one-fifth mill blind and mute tax.

1905. SEC. 16. There shall be levied and assessed upon all taxable property, both real and personal, within this state, in each year, the following tax for the support of said institute for the education of the mute and blind, one-fifth of one mill, on each and every dollar, to be known as the blind and mute tax; said tax to be assessed and collected in the same manner and at the same time as is now or may be prescribed by law, for the assessment and collection of state revenues. *Provided*, that all revenue over and above seven thousand dollars annually derived from said one-fifth of a mill shall be paid into the state treasury to the credit of the general fund, until such excess amounts to seven thousand dollars without interest.

Payment of excess over seven thousand dollars into state treasury.

Transmission of mute and blind fund to state treasurer.

1906. SEC. 17. It shall be the duty of the county treasurers, in the several counties, to preserve the blind and mute fund, as a separate fund, and to transmit the same monthly to the treasurer of the state, who shall keep the same as the blind and mute fund, to be at the disposal of the board of trustees of the institute for the education of the mute and blind.

Expenditure of mute and blind fund.

1907. SEC. 18. Whenever there shall be any money in the hands of the state treasurer to the credit of the blind and mute fund, the auditor of state is hereby authorized to draw his warrant upon the treasurer of the state in favor of the treasurer of said board of trustees of said institute, for the payment of such sums as said board shall deem necessary to meet the running expenses of the institute; and whenever the fund will warrant and the necessities of the institute require it, said board of trustees is authorized

and empowered to make such necessary additions to the buildings of said institute as they may deem best; *provided*, that nothing herein shall be construed as authorizing or empowering said trustees to create any indebtedness on said institute beyond the means in the treasury to liquidate before the improvements are begun.

Payment of treasurer's drafts by auditor of state.

1908. SEC. 19. The auditor of state shall draw his warrant in favor of the treasurer of said board, when the draft of said treasurer is accompanied by an order from the president, countersigned by the secretary of said board of trustees.

Application of fund.

1909. SEC. 20. The fund created by section sixteen of this act, shall be applied exclusively to the objects and purposes mentioned in the various provisions of this act.

Period of service of first board of trustees.

1910. SEC. 21. The members of the first board of trustees herein provided for, shall be appointed by the governor immediately after this act takes effect, and said members shall hold their office as such trustees until the next regular meeting of the general assembly; and thereafter trustees shall be appointed in the manner hereinbefore provided.

Vesting of title to property of institute for the education of mutes.

1911. SEC. 22. This act shall not take effect unless the fee simple title to the real estate now occupied and controlled by the said "institute for the education of mutes," shall, within eighty days from the passage of this act, be vested in said last named institute, free of any condition of defeasance whatever. When the said title shall be so vested, it shall be the duty of the attorney-general to certify such fact in writing, to the state auditor, and the state auditor shall notify the county clerks of the several counties of this state of the same, in order that the tax herein provided for may be properly levied and assessed.

Transfer of property of the institute for the education of mutes to trustees of institute for education of mute and blind.

1912. SEC. 23. If the title to said property shall be vested as provided for in the preceding section, then the said "institute for the education of mutes," shall, as soon as the trustees herein provided for shall have been appointed and qualified, transfer and convey the said property by a good a sufficient deed of conveyance for such purpose, to the said trustees and their successors in office, to be held by such trustees, in trust for the use and benefit of the state

of Colorado; and said "institute for the education of mutes" shall also transfer and deliver to said trustees, all other property, both real and personal, belonging thereto.

Approved, March 15, 1877.

CHAPTER LXIX.

NOTARIES.

[Revised Statutes, Chapter LXIV.]

1913. SECTION 1. The governor shall appoint and commission in each county, as occasion may require, one or more notaries-public, who shall hold their office for four years unless sooner removed. Appointment and term of notaries.

1914. SEC. 2. They may receive the proof or acknowledgment of all instruments of writing relating to commerce and navigation, receive and authenticate the acknowledgments of deeds and powers of attorney, make declarations and protests, and do all other acts usually done and performed by notaries-public in other states and territories, and certify the truth of all their official acts under their official seal. Powers and duties.

1915. SEC. 3. Every notary public shall keep a fair record of his official acts, and if required, give a certified copy of any record in his office, upon the payment of the fees therefor. Record of official acts.

1916. SEC. 4. If any notary die, resign, become disqualified or remove from his county, his record and the official and public papers of his office shall, within thirty days be delivered to the register of deeds of his county. Delivery of official papers in case of death, resignation, etc.

1917. SEC. 5. The official acts of every notary shall be attested by his notarial seal, which shall, as heretofore, consist of an impression upon paper or wax, setting forth the name and residence of such notary. Attestation of official acts by seal.

1918. SEC. 6. Every notary public, before entering upon the duties of his office shall take the oath of office prescribed by law, and shall give bonds to the state of Colorado, in the sum of five hundred dollars with good sureties, conditioned that he will faithfully perform the duties of his office; such bond shall be approved by the county Oath and bond of notary.

clerk, who shall indorse on every such bond which he shall approve as follows: "I am acquainted with the securities herein, and believe them to be worth the amount of the penal sum of the within bond, over and above all their just debts and liabilities."

Action on bond for unfaithful performance of duties.

1919. SEC. 7. Such bond, with the oath indorsed thereon, shall be recorded in the office of the register of deeds for the county in which the notary shall reside, and may be sued on, by any person injured on account of the unfaithful performance of said notary's duties: *Provided*, that no suit shall be so instituted after three years have elapsed from the time the cause of action accrued.

Administering of oaths and acknowledgment of deeds, etc.

1920. SEC. 8. Notaries shall have authority to administer all oaths, provided for by law, and to acknowledge all instruments of writing conveying or affecting real estate or other property in any part of this state.

Confirmation of official acts and acknowledgments heretofore performed or taken.

1921. SEC. 9. All acknowledgments heretofore taken and official acts performed by notaries public holding their commissions under the territory of Kansas, and all acknowledgments hertofore taken by any judge or justice of any organized court, within the limits of this state, are hereby confirmed and made valid if otherwise correct.

Duties in regard to protest of notes, bills, etc.; notice to be given.

1922. SEC. 10. It shall be the duty of every notary public in this state, whenever any bill of exchange, promissory note or other instrument in writing, shall be by him protested for non-acceptance or non-payment, to give notice in writing thereof to the maker or makers and to each and every indorser or security on any promisory note or other instrument in writing on the same day the protest is made, or within twenty-four hours from the time of such protest.

Record of notices of protest; what to contain.

1923. SEC. 11. It shall be the duty of every notary public in this state to keep a correct record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record shall at all times be competent to prove such notice, in any trial in any court in this state where proof of such notice may become requisite.

1924. SEC. 12. It shall be the duty of each an every

notary public, personally to serve the notice upon the person or persons protested against; *provided*, he or they reside in the town where such protest was made, or within one mile thereof; but if such person or persons reside more than one mile from such town, then the said notice may be forwarded by mail or other safe conveyance. In what manner notice of protest to be served.

CHAPTER LXX.

OATHS AND AFFIRMATIONS.

[Revised Statutes, Chapter LXV.]

1925. SECTION 1. Whenever any person shall be required to take an oath before he enters upon the discharge of any office, place or business, or on any other lawful occasion, it shall be lawful for any person employed to administer the oath, to administer it in the following form, to wit: The person swearing shall, with his or her hand uplifted, swear "By the ever-living God." Form of administering oath.

1926. SEC. 2. Whenever any person required to take or subscribe an oath as aforesaid, and in all cases where an oath is, upon any lawful occasion, to be administered, and such person shall have conscientious scruples against taking an oath, he or she shall be permitted, instead of taking an oath, to make his or her solemn affirmation or declaration, in the following form, to wit: "You do solemnly, sincerely, and truly declare and affirm," which solemn affirmation or declaration shall be equally valid as if such person had taken an oath, in the usual form; and every person guilty of falsely and corruptly declaring, as aforesaid, shall incur and suffer the like pains and penalities as are, or shall be, inflicted on persons guilty of wilful and corrupt perjury. Form of solemn affirmation; to have same validity of oath; false affirmation deemed perjury.

1927. SEC. 3. All courts in this state, and each judge, justice and clerk thereof, and all justices of the peace and notaries public shall respectively have power to administer oaths and affirmations to witnesses and others, concerning anything depending or proceeding commenced, or to be commenced, before them respectively; and the said courts, Who may administer oaths.

judges, justices, notaries public, and clerks within their respective districts or counties, shall respectively have power to administer all oaths of office, and other oaths required to be taken by any person upon any lawful occasion, and to take affidavits and depositions concerning any matter or thing, process or proceeding pending or to be commenced in any court or before any justice of the peace, or on any occasion wherein such affidavit or deposition are authorized or required by law to be taken.

Administration of oaths by chairman or member of committee of general assembly.

1928. SEC. 4. The chairman or any member of any committee, appointed by either branch of the legislative assembly of this state, or any member of any joint committee, appointed by the two houses of the legislative assembly, shall be authorized to administer oaths and affirmations to witnesses, touching any matter or thing which may be under the consideration or investigation of the committee.

False oath or affirmation deemed and punished as perjury.

1929. SEC. 5. All oaths and affirmations, affidavits and depositions administered or taken as provided in this chapter, shall subject any person who shall so swear or affirm wilfully or falsely, in matter material to any issue or point in question, to the pains and penalties inflicted by law, for the time being, on persons guilty of wilful and corrupt perjury.

Administration of oaths out of this state; how to be certified.

1930. SEC. 6. All oaths and affirmations required or authorized to be taken by any statute of this state, may, when the person required to make the same, resides out of, or is absent from this state, be made before and administered by any notary public or clerk of any court of record of the state wherein such person may be, such notary or clerk certifying the same under his notarial seal or the seal of such court.

CHAPTER LXXI.

OFFICIAL BONDS.

[Revised Statutes, Chapter LXVI]

1931. SECTION 1. The clerks of the district court of this state be, and they are hereby required, to execute a bond to the people of the state of Colorado in the penal

sum of five thousand dollars each, with sufficient security, to be approved by the judges of their respective districts, conditioned for the faithful performance of their duties as clerk of said court, and that they will punctually pay over to the person legally authorized to receive the same, all moneys that may come into their hands by virtue of the said office.

Bond of clerk district court; amount and condition.

1932. SEC. 2. The bonds so executed by said clerks, may be sued upon in the name of the people to the use of any person or persons injured by their breach, in any court of competent jurisdiction.

Who may bring suit upon bond of clerk district court.

1933. SEC. 3. Every such bond shall, before such clerk shall enter upon the duties of his office, be filed in the office of the secretary of the state, and copies thereof certified by the secretary under the seal of the state, shall be received as evidence, without proof of the execution of the original in all courts of this state.

Bond to be filed with secretary of state; certified copies to be evidence.

1934. SEC. 4. All bonds required by law or the courts of equity, to be executed by masters or receivers in chancery, shall be executed to the people of the state of Colorado, as obligee, and may be prosecuted by any person or persons, in the name of the people of the state, for the use of the person aggrieved.

Bonds of masters or receivers in chancery

1935. SEC. 5. It shall be the duty of the presiding judge of the district court of each district or county in this state, in open court, on the first day of each term of said court, to examine and inquire into the sufficiency of the official bonds of the clerk of said court, and of each of the masters in chancery thereof, and if it shall appear that any one or more of the securities on any such official bond has or have removed from the county or district, died or become insolvent, or are of doubtful solvency, an order shall be entered of record requiring such clerk or master, within such time as may be fixed by the court, not less than five nor more than ten days, from the entry of such order, to file a new bond, with securities, to be approved as is now required by law, unless the number and pecuniary ability of other securities on the bond shall be such as to satisfy the said judge that the said bond is sufficient, notwithstanding one or more of the securities may have removed, died,

Examination of sufficiency of bonds of clerks and masters, by judges of district courts.

become insolvent, or of doubtful solvency, in which case the bond in question may, in the discretion of said judge, be held to be sufficient. In order that such examination may conveniently be made, every clerk of the district court shall procure and cause to be filed in the office of the clerk of each county in his district a duly certified copy of such official bond.

Examination of sufficiency of bonds of county officers by county commissioners.

1936. SEC. 6. It shall be the duty of the board of county commissioners of each county, at each regular term, on the first day of each term, to examine and inquire into the sufficiency of the official bond of the county judge, justices of the peace, constables, county treasurer, sheriff, coroner, county assessor, county clerk and county surveyor, and all other official bonds given or to be given by any county officer, as required by law; and if it shall appear that one or more of the securities on the official bond of any such county officer has or have removed from the county, died, or become insolvent, or of doubtful solvency, the said board of county commissioners shall cause such county judge, justice of the peace, sheriff, coroner, constable, county treasurer, county clerk, assessor, county surveyor or other county officer, to be summoned to appear before said board, on a day to be named in said summons, to show cause why he should not be required to give a new bond, with sufficient security; and if, at the appointed time, he should fail to satisfy said board as to the sufficiency of the present security, an order shall be entered of record by said board, requiring such county judge, justice of the peace, sheriff, coroner, constable, county treasurer, county clerk, assessor, county surveyor, or other county officer, to file in the office of the county clerk, within twenty days, a new bond, to be approved as required by law, unless the number and pecuniary ability of other securities on the bond shall be such as to satisfy the said board that the bond is sufficient, notwithstanding one or more of the securities on said bond may have removed, be dead, insolvent or of doubtful solvency, in which case the bond in question may, in the discretion of said board, be held to be sufficient.

1937. SEC. 7. It shall be the duty of each county judge

twice in each year, and at the terms of said court to be holden on the first Mondays in January and July, or oftener, if in the discretion of said judge necessary, in open court, on the first day of such term, to examine and inquire into the sufficiency of the official bond of each executor, administrator and guardian, and of any other official bond which may be filed in his office; and if it shall appear that any one or more of the securities on the official bond of any such executor, administrator, guardian or other officer or person, has or have removed from the county, died, or become insolvent or of doubtful solvency, the said county judge shall cause such executor, administrator, guardian or other officer or person, to be summoned to appear before him, on a day to be named in said summons, to show cause why he should not be required to give a new bond with security; and if, at the appointed time, he should fail to satisfy such county judge of the sufficiency of the present security, an order shall be made on the records of said county court, requiring such executor, administrator, guardian, or other officer or person, to file in the office of the county judge, a new bond, to be approved as required by law, unless the number and pecuniary ability of other security on the bond, shall be such as to satisfy said county judge that the bond is sufficient, notwithstanding one or more of the securities on said bond may have removed, or be dead, or insolvent or of doubtful solvency; in which case the bond in question, may, in the discretion of such county judge, be held to be sufficient.

Examination of sufficiency of bonds of executors, administrators, guardians, etc., by county judges.

1938. SEC. 8. Any person having any pecuniary interest in the sufficiency of the official bond of any of the officers or persons hereinbefore named, may appear at the prescribed time and place, and shall be allowed to introduce any evidence legally conducing to prove the removal, death, insolvency, or doubtful solvency of any security on such official bond, and the officer or person interested, or any of his securities, may also appear and introduce any evidence legally conducing to establish the sufficiency of such official bond.

What evidence may be allowed on examination of sufficiency of bonds.

1939. SEC. 9. It shall be the duty of the judge of said district court, county judge, and board of county commis-

What entries to be made of record.

sioners, above named, to enter upon their respective records at the time hereinbefore prescribed for an examination, that an examination and inquiry into the sufficiency of the official bonds within their cognizance has been made, and that they severally are deemed sufficient, or insufficient, as the facts may justify.

In case of default of officer to file new bond; office deemed vacant.

1940. SEC. 10. If any officer or person hereinbefore enumerated, shall fail to file a new bond within the prescribed time, when so required, under the provisions of this chapter, by an order entered of record requiring the filing of such new bond, the officer in default shall be deemed and held to have vacated his office, and the same steps shall be taken to fill such vacancy thus created, as are now taken to fill a vacancy by the death or resignation of such officer.

Proceedings for discharge of surety on official bond of county officers and clerks of district courts.

1941. SEC. 11. Any person who now is or may hereafter become the security of any sheriff, coroner, county judge, justice of the peace, county clerk, constable, county treasurer, county surveyor or other county officer, shall have the power of releasing himself from further liability as such security for such officer, by filing in the office of the county clerk, a notice that he is unwilling longer to be security for such sheriff, coroner, county judge, justice of the peace, county clerk, assessor, county treasurer, county surveyor or other county officer: *Provided, however*, if the person so desiring to be released from such securityship, shall be security for the county clerk, he shall, in addition to the above notice, deliver a copy of the same to the chairman of the board of county commissioners, or if he be absent, to some other member of said board. Any person who now is or may hereafter become security on the official bond of the clerk of the district court, or master in chancery, may, in like manner, become released, by filing a notice in the office of said clerk of the district court in like manner, and also delivering a copy thereof to the judge of said court.

Proceedings in case of filing additional security.

1942. SEC. 12. When any notice shall be filed as aforesaid with the county clerk, he shall immediately give notice thereof to such sheriff, coroner, county judge or other county officer, as the case may be, who shall thereupon file other security, to be approved by the board of county com-

missioners, if the same shall then be in session, or if a session thereof be commenced within ten days after notice shall have been given; but if said board be not in session, nor a session thereof to be commenced within ten days thereafter, then the said sheriff, coroner, county judge, justice of the peace, or other county officer, as the case may be, shall within ten days, file said bond with the county clerk, which said clerk shall in such case, judge of the sufficiency of said bond, subject, however, to the decision and approval of said board of county commissioners at their first meeting thereafter, as in other cases: *Provided, however*, if such notice relate to the security of the county clerk, it shall be the duty of the commissioner to whom the copy of such notice is given, immediately to require said clerk to file other security, to be approved by the board of county commissioners in like manner as aforesaid; but if said board be not in session, then in such case the county commissioner to whom such notice may be given, may approve such security subject, however, to the decision and approval of the said board at their first session thereafter, as in other cases, and in case such notice relate to the security of the clerk of the district court, or any master in chancery thereof, it shall be the duty of the judge of said court forthwith upon receiving such notice to require such master in chancery or clerk to file within ten days other security to be approved by him as in other cases.

In case of default of officer to file new bond, office deemed vacant.

1943. SEC. 13. If said clerk of the district court, master in chancery, sheriff, coroner, county judge, justice of the peace, constable, county treasurer, assessor, county clerk, county surveyor or other officer, as the case may be, shall not in the time and manner aforesaid, file bond, to be approved as aforesaid, the said office shall become vacant, and the said vacancy shall be filled in manner as is now provided by law.

Discharge of liability of former sureties.

1944. SEC. 14. If a new bond shall be given by any officer as provided in the foregoing sections of this chapter, then the former securities shall be entirely released and discharged from all liability incurred by any such officer, in consequence of business which may have come to hand from and after the time of the approval of the said new

bond, and the securities to the new bond are hereby declared to be liable for all official delinquincies of said officer, whether of omission or commission, which may occur after approval of the new bond as aforesaid.

Declaration of vacancy to be part of judgment in case of conviction of officer for embezzlement.

1945. SEC. 15. If any sheriff, master in chancery, clerk of the district court, coroner, county judge, justice of the peace, constable, county treasurer, assessor, county clerk, or other officer, shall embezzle or appropriate to his own use any money which may be paid to him by virtue of his office, he shall be liable to be indicted therefor, and, upon conviction thereof, the court pronouncing such judgment of conviction shall, as a part of such judgment, declare the office held by such officer vacant, and such vacancy shall be filled as now provided by law.

Delivery of official books, papers, moneys, etc., to sureties, in case of failure of officer to file bond.

1946. SEC. 16. It shall be the duty of such master in chancery, clerk of the district court, sheriff, coroner, county judge, justice of the peace, constable, county treasurer, county assessor, county clerk, or other officer, if he shall fail to give bond as provided for in this chapter, to deliver over to his securities forthwith, all books, moneys, vouchers, papers, and every description of property whatever, pertaining to his said office; and the said sureties may at any time after said failure to file said bond, maintain an action of replevin, or other appropriate action to recover such property, money or effects, from their said principal.

Penalty for failure of officer to deliver money, property, etc., to sureties, or attempting to exercise official duties.

1947. SEC. 17. If any officer designated in the foregoing sections of this chapter shall fail to deliver any money, property, or effects as aforesaid to his securities, or shall act or attempt to act in the performance of the duties of his said office, after failing to give a new bond as aforesaid, he shall be deemed guilty of a high misdemeanor, and. upon indictment and conviction therefor, shall be fined in any sum not less than five hundred dollars, nor more than five thousand dollars.

Sureties not released from previous liabilities by filing of new bond.

1948. SEC. 18. The provisions of this chapter shall not be so construed as to operate as a release on the securities of any of the aforesaid officers, for liabilities incurred previous to the filing of a new bond, as required in the foregoing sections of this chapter.

1949. SEC. 19. Hereafter the official bond of all sheriffs

and coroners of this state shall be filed in the office of the county clerk, and approved by the board of county commissioners, in manner as now required by law, in open session, at their first meeting after the filing of such bond: *provided*, if said board of county commissioners be not in session, when said bond shall be filed, then the county clerk shall judge of its sufficiency, subject to the final decision and approval of said board at their first meeting thereafter.

Where bonds of sheriffs and coroners to be filed and approved.

1950. SEC. 20. Hereafter all county judges, justices of the peace, constables, county treasurer, assessor, county clerk, or any county officer, elected according to the laws of this state, shall file their official bonds in the office of the county clerk, which said bond shall be executed as required by law, and shall be approved by the board of county commissioners in open session: *provided*, if said board be not in session on the filing of such bond, then the county clerk shall judge of its sufficiency, subject, however, to the final decision and approval of said board at their first meeting thereafter; *and provided, further*, that if said board be not in session, the county clerk, in filing his bond as aforesaid, shall present the same to the chairman of the board of county commissioners, or in case of his absence or inability to act, to one of the other members of said board, who shall judge of its sufficiency, subject as aforesaid, to the decision and approval of said board at their first meeting thereafter.

Filing and approval of bonds of other county officers.

1951. SEC. 21. All persons interested may appear before said board of county commissioners and offer evidence as to the sufficiency or insufficiency of the securities on the official bond of any of the officers named in this chapter.

Who may appear and give evidence before county commissioners in regard to securities on official bonds.

1952. SEC. 22. It shall be the duty of the board of county commissioners to make an entry in the records of said board, of their approval of all official bonds: and when so approved by said board, the county clerk shall record the same in the records of said county, for inspection by all persons.

Record of approval of official bonds.

1953. SEC. 23. If any board of county commissioners shall wilfully neglect to inquire and examine into the sufficiency of any of the official bonds named in this chapter, they, and each of them, shall be deemed guilty of a public omission of duty, and shall be liable in damages

Neglect of commissioners to inquire into sufficiency of official bonds, deemed public omission of duty; action for damages therefor.

to any person who may receive injury by such neglect to be recovered before any court of competent jurisdiction in this state, by an action on the case.

Disposition of fines.

1954. SEC. 24. All fines accruing under the provisions of this chapter, shall be paid into the county treasury for the use of common schools of this state.

CHAPTER LXXII.

OFFICIAL REPORTS.

AN ACT TO PROVIDE FOR PUBLICATICATION AND DISTRIBUTION OF OFFICIAL REPORTS.

Be it enacted by the General Assembly of the State of Colorado:

Publication of annual reports of state officers.

1955. SECTION 1. All officers required by any law of this state to make annual reports to the governor or legislature, shall, within five days after the close of each fiscal year, complete and deposit the same with the governor, and it shall be the duty of the secretary of state within ten days after the close of the fiscal year next preceding the regular session of the legislature, to place the reports of the two preceding fiscal years in the hands of the person authorized to do the public printing, for publication, and superintend the printing of the same, and see that it is done in a proper manner.

Number of copies to be printed, and disposition of the same.

1956. SEC. 2. Of each of the reports of the said officers, there shall be published two hundred and fifty (250) copies, of which number, one hundred and fifty (150) copies shall be for the use of the general assembly and state officers and the remaining copies shall be preserved for binding with the other joint documents for the two fiscal years for which such reports are made.

Approved, January 29, 1877.

CHAPTER LXXIII.

ORE.

AN ACT TO FACILITATE THE RECOVERY OF ORE, TAKEN BY THEFT OR TRESPASS—TO REGULATE THE SALE AND DISPOSITION OF THE SAME, AND FOR THE BETTER PROTECTION OF MINE OWNERS.

Be it enacted by the General Assembly of the State of Colorado:

What record shall be kept of the delivery of each lot of ore.

1957. SECTION 1. That every person, association or corporation that shall be engaged in the business of milling, sampling, concentrating, reducing, shipping or purchasing ores in the state of Colorado, shall keep and preserve a book in which shall be entered at the time of the delivery of each lot of ore:

First—The name of the party on whose behalf such ore is delivered, as stated.

Second—The name of the teamster, packer or other persons actually delivering such ore, and the name of the owner of the team or pack train delivering such ore.

Third—The weight or amount of every such lot of ore.

Fourth—The name and location of the mine or claim from which it shall be stated that the same has been mined or procured.

Fifth—The date of delivery of any and all lots or parcels of ore.

Examination of record by person having ore stolen.

1958. SEC. 2. Whenever affidavit shall have been made before any police magistrate of any town in this state or any justice of the peace of any county, by any person, that ore has been stolen from him, stating as near as may be the amount and value of the ore stolen, such person upon presentation of a certified copy of such affidavit, shall have access to such book, and may examine the entries which may have been made therein during a period of fifteen days next preceding the filing of such affidavit: *provided*, that the person making such affidavit shall, at the time of making the same, have a present interest in the product of the mine or claim from which said ore has been stolen, or in the ore alleged to have been stolen.

1959. SEC. 3. Every person, association or corporation that shall fail or refuse to keep the book required by the

Penalty for failure or refusal to keep such record or to make entries therein, or to make false entry; liability for damages.

terms of the first section of this act, or shall fail or refuse to make any proper entry therein, or who shall make any false entry therein, or who shall refuse to any person who may be entitled to the same, as provided by section two (2) of this act, the right of inspection thereof, shall forfeit and pay for each and every violation of the provisions of said section a penalty of not less than fifty (50) nor more than three hundred (300) dollars, to be collected by action of debt at the suit of any person who may sue for the same. In addition to such penalty, any person, association or corporation violating the provisions of said first section, shall be liable at the suit of the party or person aggrieved, in the proper form of action, for all damages which may accrue to any party or person by reason of any such violation. And in all actions the fact that a false entry has been made, shall be *prima facie* evidence that the same was made wilfully or knowingly.

Failure or neglect to make necessary inquiries, etc., not to excuse party from judgment.

1960. SEC. 4. If any person, association, or corporation shall fail or neglect to make the inquiries necessary to the making of the proper entries in said book, as provided by section one (1) of this act, or shall so negligently make entries therein that any lot of ore cannot be particularly identified, or so negligently that it cannot be perceived therefrom, what person delivered any lot of ore or received the proceeds of the same, when purchased, or shall fail to keep such book, or shall wilfully suffer the same to be lost, or mislaid, so that the same cannot be produced for inspection, such failure or neglect shall not excuse any party defendant in any suit brought under the preceding section from judgment for any penalty prescribed by said section.

Purchase, contract for or payment for ore taken from mine not lawfully held; how considered.

1961. SEC. 5. Any person, association or corporation, or the agent of any person, association or corporation, who shall knowingly purchase or contract to purchase, or shall make any payment for or on account of any ore, which shall have been taken from any mine, or claim, by persons who have taken, or may be holding possession of any such mine, or claim, contrary to any penal law now in force, or which may be hereafter enacted, shall be considered as an accessory after the fact to the unlawful holding or taking of such mine, or claim, and upon conviction shall be sub-

jected to the same punishment to which the principals may be liable.

1962. SEC. 6. Any person, association or corporation, or the agent of any person, association or corporation engaged in the business of milling, sampling, concentrating, reducing, shipping or purchasing ores, as aforesaid, who shall keep or use any false or fraudulent scales or weights, for weighing ore, or who shall keep or use any false or fraudulent assay scales, or weights for ascertaining the assay value of ore, knowing them to be false, every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding one thousand (1000) dollars, nor less than one hundred (100) dollars, or imprisonment not more than one year, or both, at the discretion of the court.

Punishment for using false or fraudulent scales and weights.

1963. SEC. 7. Any person, corporation or association, or the agent of any person, corporation or association engaged in the milling, sampling, concentrating, reducing, shipping or purchasing of ores in this state, who shall, in any manner, knowingly alter or change the true value of any ores delivered to him or them, so as to deprive the seller of the result of the correct value of the same, or who shall substitute other ores for that delivered to him or them, or who shall issue any bill of sale or certificate of purchase that does not exactly and truthfully state the actual weight, assay value and total amount paid for any lot or lots of ore purchased, or who, by any secret understanding or agreement with another, shall issue a bill of sale or certificate of purchase that does not truthfully and correctly set forth the weight, assay value, and total amount paid for any lot or lots of ore purchased by him or them, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding one thousand (1000) dollars, nor less than one hundred (100) dollars, or imprisonment not more than one year, or both, at the discretion of the court.

Penalty for altering or changing the true value of ores, etc.

1964. SEC. 8. If any person, lessee, licensee or employé in or about any mine in this state, shall break and sever, with intent to steal the ore or mineral from any mine, lode, ledge or deposit in this state, or shall take, remove or con-

Breaking into mine with intent to steal ore, or removing or concealing ore from mine, deemed and punished as grand larceny.

ceal the ore or mineral from any mine, lode, ledge or deposit, with intent to defraud the owner or owners, lessee or licensee of any such mine, lode, ledge or deposit, such offender shall be deemed guilty of felony, and on conviction, shall be punished as for grand larceny.

Approved, February 7, 1877.

CHAPTER LXXIV.

PARTITION.

[Revised Statutes, Chapter LXVII.]

Partition of lands held in common; how obtained; where petition to be presented.

1965. SECTION 1. When any lands, tenements or hereditaments shall be held in joint tenancy, tenancy in common or coparcenary, whether such right or title be derived by purchase, devise or descent, or whether any, all, or a part of such claimants, be of full age, or minors, it shall be lawful for one or more of the persons interested, by themselves, if of full age, or by their guardians, if minors, to present to the district court of the county where such lands or tenements lie, or where the lands or tenements lie in different counties, in the district court of the county in which the major part of such lands lie; but if the major part of such lands do not lie in any one county, then to the district court of any county in which any of such lands lie, their petition praying for a division and partition of such premises, according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition cannot be made without prejudice to the owners.

What petition shall set forth.

1966. SEC. 2. The petition shall particularly describe the premises sought to be divided or sold, and shall set forth and make exhibit of the rights and titles of all parties interested therein, so far as the same are known to the petitioners, including tenants for years, for life, by the courtesy or in dower, and of persons entitled to the reversion, remainder or inheritance, and of every person who, upon any contingency, may be or become entitled to any beneficial interest in the premises, so far as the same are known to the petitioners; and such petition shall be verified by affidavit.

1967. SEC. 3. Every person having such interest as is specified in this chapter, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, shall be made a party to such petition. Who shall be made parties.

1968. SEC. 4. In cases where one or more of such parties shall be unknown or the share or quantity of interest of any of the parties is unknown to the petitioner, or where such share or interest shall be uncertain, or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be contingent, so that such parties cannot be named, the same shall be so stated in the petition. In cases where parties are unknown, or where interest is contingent, the same to be stated in petition

1969. SEC. 5. All persons interested in the premises of which partition is sought to be made according to the provisions hereof, whose names are unknown, may be made parties to such petition by the name and description of unknown owners or proprietors of the premises, or as the unknown heirs of any person who may have been interested in the same. By what description unknown owners made parties.

1970. SEC. 6. All persons having such interest as is specified in this chapter in any premises of which partition is sought to be made, or the guardians of such as are under age, who shall not have joined in the petition (and if any person so interested be under age, and without guardian, the court shall appoint guardian *ad litem* for such minor,) shall have notice of such application by summons duly served, which summons shall issue against such persons by the name and description given in the petition; and when the names of persons having any such interest in such premises are unknown, and when parties whose names are known do not reside in this state, or cannot be found, they shall have further notice by advertisement, as provided by law; and after such advertisement, the court shall proceed to act in the premises, as though the parties had been duly served with summons, or had been notified by their proper names. Issue and service of summons.

1971. SEC. 7. During the pendency of any such suit or proceedings, any person claiming to be interested in the premises to be assigned or parted, may appear and answer

Person claiming interest may appear and interplead

the petition, and assert his or her rights by way of interpleader; and the courts shall decide upon the rights of persons appearing as aforesaid, as though they had been made parties in the first instance.

Ascertainment and declaration of rights, titles and interests of all parties by the court.

1972. SEC. 8. The court shall ascertain from the evidence in case of default, or from the confession by plea of the parties, if they appear, or from the verdict by which any issue of fact shall be determined, and shall declare the rights, titles, and interests of all the parties to such proceedings, petitioners as well as defendants, and give such judgment as may be required by the rights of the parties.

Appointment of commissioners; oath; assignment of share of each party; report of partition. (Amendment 1876.)

1973. SEC. 9. The court, when it shall order a partition of any premises to be made under the provisions hereof, shall appoint three commissioners not connected with any of the parties, either by consanguinity or affinity, and entirely disinterested, each of whom shall take an oath before the court, or some justice of the peace, fairly and impartially to make partition of said lands, in accordance with the judgment of the court as to the rights and interests of the parties, if the same can be done consistently with the interests of the estate, and the said commissioners shall go upon the premises, and make partition of said lands, tenements and hereditaments, assigning to each party his or her share by metes and bounds, or other appropriate description; and make report, which shall be under their hands and seals, to the court during the same or next succeding term at which they were appointed; and the court may, at the term when such report shall be made, make all such orders upon such reports as may be necessary to a final disposition of the case.

Compensation of commissioners.

1974. SEC. 10. The commissioners to be appointed under this chapter, shall be allowed as a compensation for their services, two dollars and fifty cents per day each, to be taxed as other costs.

1975. SEC. 11. When any lands, houses or lots are so circumstanced that a division thereof cannot be made without manifest prejudice to the proprietors of the same, and the commissioners appointed to divide the same, shall so report to the court, the court shall thereupon give an order

to said commissioners, or other person or persons, to sell such lands, houses or lots, or houses and lots, at public vendue, upon such terms, and by giving notice of sale as the court shall direct, and who shall make and execute good and sufficient conveyance or conveyances to the purchaser or purchasers thereof, which shall operate as an effectual bar, both in law and equity, against such owners or proprietors, and all persons claiming under them; and and the commissioners or persons making such sale, shall report their proceedings to the court, and shall pay over the moneys arising therefrom to the parties entitled to receive the same, under the direction of the court; the court to make such order in relation to costs as shall seem right.

Sale and conveyance of lands in case partition cannot be made without prejudice.

1976. SEC. 12. When a sale of any lands or premises shall be made in accordance with the preceding section, and no person shall appear to claim such portions of the money as may belong to any non-resident, or person whose name is unknown, the court shall thereupon require the money belonging to the persons not claiming as aforesaid, to be deposited in the treasury of the state, subject to the further order of the court; and all money required to be deposited as aforesaid, shall be received by the state treasurer, and paid out upon the order of the court.

Disposition of unclaimed proceeds of sales.

1977. SEC. 13. When money shall be deposited in the state treasury under the provisions of this chapter, the person or persons entitled to the same, may at any time apply to the court making the order of sale, and obtain an order for the same, upon making satisfactory proof to the court of his or her or their right thereto.

In what manner persons entitled may obtain an order for unclaimed proceeds of sales

1978. SEC. 14. No plea in abatement shall be received in any suit for partition, nor shall such suit abate by the death of any tenant.

Plea in abatement not received in partition.

1979. SEC. 15. The courts of chancery of this state shall have power, upon bills for the partition of lands, to proceed according to the usual practice of courts of chancery, or according to the provisions of the preceeding sections; they shall also have power upon bill or petition for the partition of lands, to investigate and determine all questions of conflicting or controverted titles, and to remove clouds upon the title to any of the premises whereof

Powers of courts of chancery in proceedings in partition.

partition is sought; to invest titles by their decrees, without the form of coveyances by infants and unknown heirs or persons; to order a sale of the premises where for any reason, the same cannot conveniently be partitioned, and by its decree, to invest the purchaser with title; and where partition is made of premises which are subject to any encumbrance, to apportion such encumbrance among the persons to whom partition is made.

CHAPTER LXXV.

PARTNERSHIPS.

AN ACT RELATING TO PARTNERSHIP.

[Session Laws, 1874.]

Limited partnerships legalized.

1980. SECTION 1. That hereafter it shall be lawful to form limited partnerships within this state, in accordance with the provisions of this act.

General and special partnerships defined; liability for partnership debts.

1981. SEC. 2. Such partnership shall consist of one or more persons, who shall be called general partners, who shall be jointly and severally liable, as general partners now are, and of one or more persons contributing a specified amount of capital in cash or other property, at cash value, to the common stock, who shall be special partners, and who shall not be liable for the debts of the partnership beyond the amount of the fund so contributed by them respectively to the capital stock, except as hereinafter provided.

Authority of general partners.

1982. SEC. 3. The general partner or partners only shall be authorized to transact the business, to sign for the partnership, and to bind the same.

Certificate of partnership; what to contain.

1983. SEC. 4. Persons desiring to form such partnership shall make and severally sign a certificate, which shall contain:

First—The name of the firm under which the partnership is to be carried on.

Second—The nature of the business to be transacted.

Third—The names of the general and special partners, designating which are general, which special, and the place of residence of each, and the place in which the principal business is to be carried on.

Fourth—The amount of capital stock which each special partner has contributed to the common stock.

Fifth—The period at which the partnership is to commence, and the period when it will terminate.

Acknowledgment of certificate of partnership.

1984. SEC. 5. Such certificate shall be acknowledged by the several persons making the same, before some officer authorized to take acknowledgment of deeds, which acknowledgment shall be made and certified to in the same manner as now prescribed by law for the acknowledgment of deeds for the conveyance of real estate.

Filing and record of certificates of partnership.

1985. SEC. 6. Such certificates, when duly acknowledged and certified to, shall be filed in the office of the clerk of the county in which the principal business is to be carried on, and shall be recorded at large by the clerk in a book kept for that purpose; and such book shall be open for inspection at all reasonable hours to any person desiring to inspect the same. If such partnership shall have places of business in different counties, a transcript of such record, duly certified by the same clerk, shall be filed and recorded in like manner in the office of the clerk of every such county, and shall be recorded and subject to inspection, as above stated.

Affidavit of special partners.

1986. SEC. 7. At the time of filing the original certificate as above directed, an affidavit of one or more of the special partners shall be attached to such certificate or filed therewith, stating that the amount in money or property at cash value, specified in the certificate to have been contributed by such special partner, has been actually and in good faith contributed, and applied to the common stock of said partnership.

Liability for false statements in certificate or affidavit

1987. SEC. 8. No such partnership shall be deemed to have been formed until such certificate, duly acknowledged, and affidavit, shall have been filed as above directed; and if any false statement shall be made in such certificate or affidavit, all persons interested in such partnership shall be liable for all the engagements thereof, as general partners.

1988. SEC. 9. The partners shall publish the terms of partnership, including the amount of capital furnished by the special partners, and the names of all the partners, for at least four weeks, immediately after the filing of the

Publication of terms of partnership.

certificate as above directed, in some newspaper published in the county wherein said business is to be transacted, or if no newspaper is published in said county, then in a newspaper published the nearest to the place of business designated, and if such publication is not so made, the partnership shall be deemed general.

Firm name.

1989. SEC. 10. The business of the partnership shall be conducted under a firm name in which the names of the general partners only shall be inserted, and if the name of any special partner be used in the said firm with his privity and consent, or if he shall contract for said firm concerning its business, he shall be deemed and treated as a general partner.

Reduction of capital stock not permitted.

1990. SEC. 11. During the continuance of such partnership, no part of the capital stock shall be withdrawn nor any division of interest or profit be made so as to reduce such stock below the sum stated in the certificate above mentioned, and in case it should subsequently appear that such a receiving of interest was a withdrawing of original capital, the special partner or partners shall refund the same with lawful interest.

Suits by or against partners.

1991. SEC. 12. All suits respecting the business of such partnership shall be brought by and against the general partners only, except in those cases provided for in this act where the special partnership is to be deemed a general one, in which all the partners may join or be joined in such suit; and excepting, also, those cases where special partners shall be held severally responsible for and on account of any sum by them received, or withdrawn from the common stock, as above provided, in which case suit may be brought by the general partners, and the special partners entitled to receive any part of the money so withdrawn.

Dissolution of partnership before time specified in certificate.

1992. SEC. 13. No dissolution of any such partnership shall take place, except by operation of law, before the time specified in the certificate above mentioned, unless notice thereof is given by publication for at least four weeks previous to such dissolution, in some newspaper published in the county where such business is carried on, or in the nearest one thereto, and filed in the office of the clerk of

each county wherein the original certificate, or a transcript thereof, was filed, as above provided for.

1993. SEC. 14. Any married woman may become a special partner under this act, either with her husband or any other person, for the purposes of this act. She shall be competent to contract with her husband or any other person, the same as though she was a *femme sole*, and in all suits and proceedings arising or growing out of any such partnership, she shall be a witness for or against her husband, the same as though a *femme sole*.

Special partnership of married woman.

1994. SEC. 15. The clerk of the county where the certificate above mentioned shall be filed, shall be entitled to receive one dollar for the recording and indexing of every such certificate or transcript thereof.

Fees of county clerk for record or transcript of certificate.

CHAPTER LXXVI.

PAUPERS.

[Revised Statutes, Chap. LXVIII.]

1995. SECTION 1. Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, child, grandchild, brother or sister of such poor person, if they or either of them be of sufficient ability. And every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child or grandchild, sister or brother, when directed by the county commissioners of the county where such poor person shall be found, whether such relative reside in the same county or not, shall forfeit and pay to the said county commissioners, for the use of the poor of their county, the sum of twenty dollars for each and every month for which they or either of them shall fail or refuse, to be recovered in the name of the county commissioners, for the use of the poor aforesaid, in an action of *assumpsit*, before any justice of the peace or other court having jurisdiction: *Provided*, that when any

By whom paupers to be supported; persons becoming paupers from intemperance or bad conduct, not entitled to support from relation other than parent or child; penalty for refusal of relation to support pauper.

persons become paupers from intemperance or other bad conduct, they shall not be entitled to support from any relation except parent or child.

In what order relations to be called upon for support of pauper.

1996. SEC. 2. The children shall be first called on to support their parents, if they be of sufficient ability, and if there be none of sufficient ability, the parents of such poor person shall be next called on, and if there be no parents or children, the brothers and sisters of such poor person shall next be called on, and if there be no brothers or sisters, the grandchildren of such poor person shall next be called upon, and then the grandparents: *Provided*, married females, whilst their husbands live, shall not be liable to a suit.

When pauper shall receive relief from county treasury.

1997. SEC. 3. When any such poor person shall not have any such relation in any county in this state, as are named in the preceding sections, or such relation is not of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as his or her case may require, out of the county treasury in the manner hereinafter provided.

Board, nursing and medical attendance and burial in case of death, of poor person, not a pauper, falling sick.

1998. SEC. 4. When any non-resident or any other person, not coming within the definition of a pauper, shall fall sick in any county of this state, not having money or property to pay his or her board, nursing and medical attendance, it shall be the duty of the county commissioners, upon complaint being made to them or either of them, to give an order that such assistance be given to such poor person as they may deem just and necessary, and if said sick person shall die, then the said county commissioners, or commissioner, shall order to be given to such person a decent burial, and the county commissioners may make such allowance for board, nursing and medical aid or burial expenses, to the person or persons entitled thereto, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

Upon what county pauper chargeable.

1999. SEC. 5. Any person becoming chargeable as a pauper in this state, shall be chargeable as such pauper in the county in which he or she resided at the commencement of the sixty days immediately preceding such persons becoming so chargeable.

In case of person becoming pauper in another county than that of his residence.

2000. SEC. 6. If any person shall become chargeable in any county in which he or she did not reside at the commencement of the sixty days immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the county commissioners where he or she may be found, and it shall be the duty of the clerk of the county commissioners to send notice by mail to the clerk of the county commissioners of the county in which such pauper resided as before stated, that said person has become chargeable as a pauper, and requesting the authorities of said last-named county to remove said pauper forthwith, and to pay the expense accrued in taking care of him, her or them.

Recovery of charges for care of pauper, from county to which he belongs.

2001. SEC. 7. If any such pauper, by reason of sickness or disease, or by neglect of the county commissioners to which said county he or she belongs, or for any other sufficient cause, cannot be removed, then the county taking charge of such pauper may sue for and recover from the county to which he or she belongs, in any proper action, before any court having competent jurisdiction, the amount expended for and on behalf of such pauper or paupers, and in taking care of the same.

The term "residence" defined.

2002. SEC. 8. The term "residence," as used in this chapter, shall be taken and considered to mean the actual residence of the party, or the place where he or she was employed, or in case he or she was in no employment, then it shall be considered and held to be the place where he or she made it his or her home.

Penalty for bringing pauper into county where not lawfully settled; how may be recovered.

2003. SEC. 9. If any person shall bring and leave any pauper or paupers in any county in this state, wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of two hundred dollars for every such offense, to be sued for and recovered, by and to the use of such county, by action of debt, before any court having competent jurisdiction; and the suit may be brought in the county where the pauper was brought and left, and the process may be directed to and served by any proper officer in any county in this state.

Establishment of poor-house.

2004. SEC. 10. The county commissioners in each county in this state are hereby authorized, whenever they may deem it proper so to do, to establish a poor-house, and

for that purpose to purchase or lease a building upon such terms as they may deem best.

Acquisition of land for purposes of poor-house.

2005. SEC. 11. The county commissioners are hereby authorized to acquire, in the name of the county, by grant, devise or purchase, any tract of land, not exceeding six hundred and forty acres, for the purposes of such poor-house.

Levy of tax for purchase of land, erection and defraying expenses of poor-house.

2006. SEC. 12. Said county commissioners are hereby authorized and empowered to receive donations to aid in the establishment of such poor-house, and are also empowered, from time to time, if they shall see fit, to levy and collect a tax, not exceeding five mills on the dollar, on the taxable property of the county, and to appropriate the same to the purchase of land not exceeding the aforesaid six hundred and forty acres, and to erect and furnish buildings suitable for a poor-house, and to put into operation and to defray the annual expenses of said poor-house, should the labor of the inmates be inadequte thereto.

Employment of workmen and physician.

2007. SEC. 13. Said county commissioners are hereby authorized and empowered to employ such workmen, agents and other persons as may be necessary to establish and put into operation such poor-house, and to provide and appoint a physician to attend upon those who may fall sick.

Title to poor-house property to be made to county.

2008. SEC. 14. The title to all property authorized to be acquired by this chapter for the purpose of said poor-house shall be made to the county.

CHAPTER LXXVII.

PENITENTIARY.

AN ACT TO PROMOTE BETTER DISCIPLINE AND ENCOURAGE REFORMATION IN THE PENITENTIARY.

[Session Laws, 1876.]

2009. SECTION 1. That every convict who is now or may hereafter be imprisoned in the penitentiary, and who shall have performed faithfully, and all who shall hereafter perform faithfully, the duties assigned to him or her during

his or her imprisonment therein, shall be entitled to a deduction from the time of his or her sentence for the respective years thereof, and proportionately for any part of a year where there shall be a fractional part of a year, in the sentence, to wit: for the first year, one month; for the second year, two months; for the third year, three months; for the fourth year, four months; for the fifth year, five months; for the sixth and each succeeding year, six months.

Deduction from time of sentence, for faithful performance of duties.

2010. SEC. 2. In case any convict shall be guilty of willful violation of any of the rules or regulations of the penitentiary, as above provided, and shall have become entitled to any deduction from the time of his or her sentence by the provision aforesaid, he or she shall forfeit if entitled to so much, for the first offense two days, for the second offense four days, and for each subsequent offense four days, said forfeiture to be determined by the managers of the penitentiary.

Extension of time of sentence for wilful violation of rules.

2011. SEC. 3. That for the purposes of this act, whenever any convict shall have been committed under several convictions with separate sentences, they shall be construed as one continuous sentence.

Commitment under several sentences to be construed as one sentence.

2012. SEC. 4. That the provisions of this act shall apply to the convicts now in the penitentiary the same as if it had been in effect at the commencement of their sentences, excepting such convicts as have escaped from the penitentiary, or been concerned in any revolt whereby any convict has escaped.

To apply to convicts now in penitentiary.

2013. SEC. 5. It shall be the duty of the warden to keep a record in a book for that purpose, of all infractions of the prison rules and regulations, as prescribed by the managers.

Record of infractions of prison rules.

2014. SEC. 6. If a convict shall pass the entire period of his sentence without any violation of the rules and regulations, he shall be entitled to a certificate thereof from the warden, indorsed by the managers, and on presenting it to the governor, he shall be restored to citizenship.

Certificate of good conduct and restoration to citizenship.

AN ACT TO PROVIDE FOR THE MAINTENANCE, GOVERNMENT, AND POLICE OF THE PENITENTIARY; ALSO THE MODE OF APPOINTING OFFICERS, AND FIXING THE SALARY OF THE SAME, AND TO REPEAL SEVERAL ACTS RELATING THERETO.

Be it enacted by the General Assembly of the State of Colorado:

Declared a state institution.

2015. SECTION 1. The penitentiary now located at Cañon City shall be maintained as a state institution.

Appointment and term of office of commissioners.

2016. SEC. 2. The government of the penitentiary shall be vested in a board of commissioners, composed of three persons, who shall be appointed by the governor, by and with the advice and consent of the senate, no two of whom shall reside in the same judicial district; said commissioners shall hold their office for the term of two years, and until their successors are duly qualified, unless sooner removed by the governor for neglect of duty or other misconduct. Any two of said commissioners shall constitute a quorum for the transaction of business.

Organization of board.

2017. SEC. 3. Said board of commissioners shall, within twenty days after their appointment, organize by electing from their number a president and secretary. The state treasurer shall be *ex-officio* treasurer of the penitentiary.

Duties of president and secretary of board.

2018. SEC. 4. The president shall preside over all meetings of the board, and sign all certificates of indebtedness, bills, and other papers approved or allowed by said board. In the absence of the president, a president *pro tempore* may be elected. It shall be the duty of the secretary to keep a perfect record of the proceedings of the board of commissioners, in a well bound book, to be kept for that purpose, and to attest or countersign all papers which may be approved by the same.

Appointment of warden, guards, turnkeys and overseers.

2019. SEC. 5. The organization of the penitentiary shall consist of a warden and such guards, turnkeys and overseers as may in the opinion of the board of commissioners be necessary. The warden to be appointed by the governor, by and with the advice and consent of the senate, and shall hold such office for two years, unless sooner removed by the governor, upon a request, in writing, of the board, or any two of them, which request shall set forth the cause of complaint against such warden. The guards, turnkeys and overseers shall be appointed by the warden,

and shall hold their office during the pleasure of said warden, unless sooner removed at the demand of the board of commissioners.

Vacancies in office of commissioner or warden; how filled.

2020. SEC. 6. In case a vacancy occurs, either in the board of commissioners or in the office of warden of the penitentiary, it shall be the duty of the governor to appoint a person to fill said vacancy, and any person so appointed shall hold the office to which he may have been appointed during the unexpired term, and until his successor is duly qualified, unless sooner removed in accordance with sections two or five of this act.

Compensation of commissioners and warden

2021. SEC. 7. The members of the board of commissioners shall each be allowed the sum of four hundred dollars, and the warden of the penitentiary the sum of two thousand dollars per annum, as full compensation for all services required of them, payable quarterly; and the state auditor is hereby authorized to draw his warrant for the same, upon the presentation of a certificate, signed by the president and attested by the secretary of the board of commissioners.

Bond of warden; amount and conditions; official oath.

2022 SEC. 8. Before entering upon the discharge of his duties, the warden shall execute a bond, payable to the state of Colorado, in the penal sum of ten thousand dollars, with not less than five freehold securities, to be approved as to its form and the sufficiency of its securities by the attorney general and the governor of the state, who shall endorse their approval upon the same, when it shall be filed in the office of the secretary of state, the condition of said bond being that he will faithfully discharge all of his duties as warden for said institution; that he will cause to be kept a fair, intelligible and business-like record of all the transactions of a monetary character connected with the institution; that he will impartially and to the best of his ability administer the disciplinary regulations of the institution, so as to contribute to the health, safe-keeping and profitable employment of the convicts; that he will appoint no one to the office of guard, turnkey or overseer, through pecuniary consideration, and no one without due and proper regard to their qualifications for said station; that he will render a true and faithful account of all the

transactions to the board of commissioners whenever the said board may require him to do so; that he will not become directly or indirectly interested in any contract for supplying materials, labor, provisions, clothing, or any other thing for the use of said penitenitary, whereby any profit may inure to him privately, and that at the expiration of his official term he will surrender all books, papers, records, or other property or securities belonging to said institution to his successors in office. Said warden shall also take and subscribe an oath or affirmation, which shall be endorsed on the back of said bond, that he will support the constitution of the United States and the constitution of the state of Colorado, and that he will scrupulously observe all the stipulations and conditions of said bond and faithfully discharge all his duties agreeably to law and the directions of the board of commissioners, according to the best of his ability.

Bond of commissioners; amount and conditions.

2023. SEC. 9. The members of the board of commissioners shall each give a bond payable to the state of Colorado, in the penal sum of five thousand dollars, to be executed and approved in like manner, and subject as far as may be, to all the conditions and qualifications of the bond required of the warden.

Rules and regulations for government and discipline.

2024. SEC. 10. The board of commissioners shall make such rules and regulations for the government, discipline and police of the penetentiary, and for the punishment of persons confined, not inconsistent with law, as they deem expedient. They shall exercise a general superintending control over the government and discipline of the penitentiary, cause such rules and regulations as they may prescribe for the government and discipline of the prison to be printed and placed in some conspicuous place in said prison, and shall visit said prison as often as once in three months.

Inspection and hearing of complaints of prisoners.

2025. SEC. 11. The board of commissioners shall have power, and it shall be their duty to examine and inquire into all matters connected with the government, discipline and police of the penitentiary, the punishment and treatment of the prisoners. They shall inspect them, listen to any complaint of oppression or misconduct on the part of the

warden or any of the employés under him, and for that purpose the president or any member of the board, while acting under the directions of said board, shall have the powers of a justice of the peace to issue subpœnas and compel the attendance of witnesses, and administer oaths.

Meetings and record of proceedings of commissioners.

2026. SEC. 12. The board of commissioners shall meet as often as once in three months, and shall keep a record of their proceedings in a book kept for that purpose; said records shall be certified to by the president and secretary, and a copy of the same shall be furnished to the governor at any time upon his request for the same.

Who to be imprisoned in the penitentiary.

2027. SEC. 13. Convicts sentenced to hard labor in the penitentiary for life, or any term of time, by any court of the United States held within this state, must be received into the prison by the warden thereof, when delivered by the authority of the United States, and there kept in pursuance of their sentences. And all persons who shall hereafter be convicted of any crime under the laws of this state, or have been heretofore convicted under the laws of this state or of the territory of Colorado, where the punishment is imprisonment for a period of time exceeding six months, shall be imprisoned in the penitentiary, and all courts in which such conviction shall be had, shall give judgment accordingly. And all persons convicted of any crime punishable with death who shall be pardoned on condition of being imprisoned either for life or for a term of years, shall be so imprisoned in the penitentiary. All persons imprisoned or confined in the said penitentiary shall be subject to the rules and regulations thereof.

Performance of labor by convicts.

2028. SEC. 14. All male persons convicted of crime and confined in the penitentiary, under the laws of this state, except such as are precluded by the terms of the judgment of conviction, shall perform labor, under such rules and regulations as have been or may be prescribed by the board of commissioners.

Discharge of convicts.

2029. SEC. 15. No convict can be discharged from the penitentiary until he has remained the full term for which he was sentenced, to be computed from and including the day on which he was received into the same, and excluding any time the prisoner may have been at large by reason of

escape therefrom, unless he be pardoned or otherwise released by legal authority; *provided*, that nothing in this section shall be so construed as to deprive any prisoner of any reduction of time which he may be entitled to under the provisions of an act, entitled "an act to promote better discipline and encourage reformation in the penitentiary," approved, February 7, 1876.

Enforcement of obedience by use of weapons or other effectual aid.

2030. SEC. 16. If a convict sentenced to the penitentiary resist the authority of any officer, or refuse to obey his lawful commands, it is the duty of such officer immediately to enforce obedience by the use of such weapons or other aid as may be effectual; and if in so doing any convict thus resenting, be wounded or killed by such officer or his assistants, they are justified and shall be held guiltless; but such officer shall not be excusable for using greater force than the emergency of the case demands.

Duties of officers and citizens in case of insurrection or escape of convicts.

2031. SEC. 17. It is the duty of all the officers and other citizens of the state, by every means in their power, to suppress any insurrection among the convicts sentenced to the penitentiary, and to prevent the escape or rescue of any such convict therefrom, or from any other legal confinement, or from any person in whose legal custody they may be; and if in so doing, or in arresting any convict who may have escaped, such officer or other person wound or kill such convict, or other person aiding or assisting such convict, they shall be justified and held guiltless; but such officer or citizen shall not be excusable for using greater force than the emergency of the case demands.

Removal of convicts in case of pestilence or contagious sickness.

2032. SEC. 18. In case of any pestilence or contagious sickness breaking out among the convicts in the prison, the board of commissioners may cause the convicts confined therein, or any of them, to be removed to some suitable place of security, where such of them as are sick shall receive all necessary medical attendance. Such convicts must be returned as soon as may be to the penitentiary to be confined according to their respective sentences, if the same be unexpired.

What to be furnished convict when discharged

2033. SEC. 19. When any convict is discharged from the penitentiary he shall be furnished the sum of ten dollars; also, when the said convict is in need, he shall be

furnished with a new suit of common clothing, and all articles of personal property belonging to said convict that may have been turned over to the warden.

Who authorized to visit penitentiary at pleasure.

2034. SEC. 20. The following persons are authorized to visit the penitentiary at pleasure: The governor, judges of the supreme and district courts, and all regular officiating ministers of the gospel; and no other person shall be permitted to go within the walls of the prison where convicts are confined, except by special permission of the warden.

Collection of debts owing to state on account of penitentiary.

2035. SEC. 21. The board of commissioners are hereby required to take immediate steps to cause to be collected and accounted for, all the debts owing to the state of Colorado, on account of the penitentiary, or in any manner connected therewith, and all outstanding claims of any nature which the state may have on that account, including all accounts or demands that accrued to the territory of Colorado, which are hereby declared to have inured to and become claims of the state, and to that end they may, if they deem it necessary, place any claim in the hands of the attorney general for prosecution.

Penalty for commissioner or officer of penitentiary becoming interested in contracts connected with institution.

2036. SEC. 22. Should any commissioner or officer of the penitentiary become in any manner interested in contracts for providing provisions, clothing or other necessaries for the use of such penitentiary, or become in any manner interested in contracts for buildings or the construction of buildings of any kind, in any way connected with such penitentiary, or for furnishing materials of any kind for the construction of such buildings, or in any contract for the labor of convicts, such officer so interested shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction, shall be removed from office and shall forfeit any interest he may have in such contract, and shall be fined in a sum not more than two thousand dollars, nor less than five hundred dollars.

Security for execution of contracts.

2037. SEC. 23. The board of commissioners shall take bond and security for the due execution of any contract made pursuant to this act, which bond shall be in such sum as they may deem sufficient, and shall be approved by said commissioners and the attorney general, and their

approval shall be indorsed on the back of said bond, and the same shall be filed and preserved in the office of the secretary of state.

Disposition of moneys due upon contracts.

2038. SEC. 24. All sums of money which shall become due upon any such contract shall be paid into the state treasury, and shall be placed to the credit of the penitentiary fund, and in case any person or persons fail or refuse to comply with the conditions of the bond provided in the preceding section, it shall be the duty of the board of commissioners to proceed to enforce the conditions of the same.

Suits upon bonds or for enforcement of contracts due on account of penitentiary; how to be brought.

2039. SEC. 25. All suits on bonds, or for the enforcement of contracts or demands due the penitentiary or the state, by reason thereof, shall be brought in the name of the people of the state of Colorado, and in that name the board of commissioners, or with the advice and consent of said board, the warden or attorney general is hereby fully authorized to sue for and recover all sums of money or other property due from any person or persons, on any account whatever, to the people of the state, on account of said penitentiary; *provided*, that in case any of the members of said board of commissioners shall be a party to any such suit, or shall be interested in any cause of suit, then the attorney general, with the advice and consent of the governor, may conduct the same.

Residence of warden; appropriation of penitentiary supplies to use of warden forbidden

2040. SEC. 26. The warden shall reside upon the penitentiary grounds, and for that purpose shall have the use of the dwelling house thereon, but in no case shall he be allowed to appropriate any goods, clothing, supplies or any article whatsoever, purchased and intended for the use of the penitentiary, to his own use, but the same shall be kept by him and applied to the sole use for which they were purchased.

Punishment for officer receiving compensation or reward from contractor, or for procuring, aiding or assisting, etc., escape of prisoner.

2041. SEC. 27. No officer or other person employed in or about the penitentiary, shall be permitted to receive any compensation or reward from any contractor, under penalty of dismissal from office and forfeiture of one month's pay; and if any officer procure the escape of any convict, or connive at, aid, or assist in the escape of any convict from the penitentiary, whether such convict escape or not, he

shall be guilty of felony, and shall, upon conviction thereof, be sentenced to hard labor in the penitentiary for any term not less than one nor more than three years.

Biennial report of commissioners; what it shall set forth.

2042. SEC. 28. At least ten days before the meeting of each session of the general assembly, the board of commissioners shall make to the governor, in writing, a report exhibiting a comprehensive view of the government, discipline, and transactions of the penitentiary, during the interval of time between the sessions of the general assembly, which report shall particularly set forth:—

First—The number of convicts confined in the prison; the various branches of business in which they have been employed; the number employed in each branch; the average daily earnings of convicts; the age and sex of convicts; their term of imprisonment; the offense for which they were convicted; from what county they were sent; their birthplace, pursuits and habits of life, so far as can be ascertained; their conduct while in prison; the number of convicts that have escaped; the circumstances attending such escape; or died, or been discharged during the time covered by such report.

Second—The quality and quantity of food and clothing allowed to convicts, and the general state of their health during such time.

Third—The manner in which the convicts have been treated by the warden; the number that have been punished; the nature of the punishment; how often inflicted, and for what offense.

Report to governor.

2043. SEC. 29. The board of commissioners shall, from time to time, upon the demand of the governer, make and render to him a full report, embracing all the matter required to be reported by the preceding section.

Penalty for commissioner, warden, guard, etc., receiving emolument, reward or gift from convict.

2044. SEC. 30. No commissioner, warden, guard, turnkey, or other officer or employé of the penitentiary, shall, on any pretense whatever, receive from any of the convicts any sum of money, emolument, or reward whatsoever, or any article of value, as a gift, under a penalty of being discharged from the service of the penitentiary, and forfeiting all moneys due from that institution, and being disqualified of ever holding a position in said service.

Improvement of penitentiary buildings; employment of convict labor.

2045. SEC. 31. The board of commissioners shall decide what improvements shall be made in the penitentiary, whether the same shall be enlarged, or the erection or extensions of the prison or prison walls, the erection of workshops and other buildings, and improvements; *provided*, that said commissioners shall not make any improvements that will require an expenditure of money in excess of appropriations made by the general assembly for that purpose; which improvements shall be made under the superintendence of the warden upon the plans furnished by the commissioners; and he shall employ such a number of convicts in making such improvements as said commissioners may deem advisable, and he shall employ the remainder of the convicts in such labor as may be most advantageous to the penitentiary; *provided, however*, that he shall classify the convicts, and if it shall be more in the interest of the penitentiary to hire out the labor of the convicts, to be worked under the superintendence of the warden, he may hire out such labor with the consent of the commissioners.

Payments for supplies or other indebtedness of penitentiary; how to be made.

2046. SEC. 32. All certificates for the purchase of supplies or other indebtedness of the penitentiary, shall be signed by the president and attested by the secretary of the board of commissioners, and upon the presentation of the some to the state auditor he shall draw his warrant upon the state treasurer for the full amount of said certificate, to be paid out of any moneys appropriated for that purpose.

Publication of estimates and letting of contracts.

2047. SEC. 33. All purchases of supplies by the board of commissioners for the use of the penitentiary shall be made semi-annually and by contract, and estimates for that purpose shall be published for ten days in some daily newspaper published at the state capital; said publication to be made at least thirty days before the time for letting said contract; said estimate shall also be published four weeks in some weekly newspaper published in Cañon City, and the contract for furnishing such supplies shall be let to the lowest responsible bidder, when accompanied by a good and sufficient bond for the fulfillment of any such contract, according to such advertisement.

2048. SEC. 34. The advertisement mentioned in sec-

tion 33 shall state explicitly the kind, amount and quality of said supplies, when the same shall be delivered at the penitentiary, and whether bids for the whole or separate parts thereof, also the kind of funds in which such supplies will be paid for. What to be stated in advertisement.

2049. SEC. 35. When semi-annual estimates prove insufficient, the board of commissioners shall cause to be purchased, by contract, as provided for in section 33, or in open market, all such supplies as may be necessary to make up such deficiency. Purchase of supplies in case of insufficiency of same; annual estimates.

2050. SEC. 36. The warden shall, at any time, upon the request of the board, make to them a report in writing of all the affairs of the penitentiary that may be under his charge, or any part thereof that may be desired by the board. Report of warden to board of commissioners.

2051. SEC. 37. Before any claim against the penitentiary, either for services rendered or supplies or materials furnished, can be paid, the parties presenting such claim shall procure a certificate from the warden that such services have been rendered or such materials furnished; then the claim shall be considered and audited by the board of commissioners, and if allowed, in whole or in part, a certificate shall be drawn in favor of the claimant for the amount so allowed. Auditing of claims against penitentiary.

2052. SEC. 38. The warden, under the direction of the board of commissioners, shall have charge and custody of the penitentiary, with the lands and buildings, tools and implements, and every other property pertaining thereto, and it shall be the duty of the warden to superintend the internal police and discipline of the penitentiary, as required by law, and the rules and regulations prescribed by the board of commissioners, to keep an account current of all articles manufactured in the workshops; he shall also under the direction of the board of commissioners, classify the convicts in their labors so far as it can conveniently be done, to see that proper food and clothing is supplied to them, and in all things to have regard to their comfort and reformation. He shall also have charge of the library of said penitentiary, shall keep a catalogue of all books, and see that proper care is taken of them. Duties of the warden.

Account of income, business and concerns of penitentiary.

2053. SEC. 39. The warden shall keep, or cause to be kept, in suitable books, regular and complete accounts of all income, business and concerns of the penitentiary; he shall deep a true account of all moneys received for labor or other sources belonging to the penitentiary, and shall turn the same over to the state treasurer, to be placed to the credit of the penitentiary account.

Duties of guards, turnkeys and overseers.

2054. SEC. 40. The guards, turnkeys and overseers shall perform such duties in charge and oversight of the penitentiary, the care of the property belonging thereto, and the custody, government, employment and discipline of the convicts, as shall be required of them by the board of commissioners or warden, in conformity to the law and the rules and regulations adopted for the government of the penitentiary.

Hiring out labor of convicts.

2055. SEC. 41. The warden, under the direction of the board of commissioners, shall hire out the labor of the convicts to the best advantage, but in no case shall a convict be allowed to go out to labor without being under the custody of a guard or overseer of the penitentiary.

Disposition of wages earned by convicts.

2056. SEC. 42. The warden shall collect the wages earned by the convicts, and all other moneys due or belonging to the penitentiary, except appropriations from the state, and shall pay the same over to the state treasurer, to be placed to the credit of the penitentiary fund, taking a duplicate receipt for the same, one copy of which he will give to the secretary of the board of commissioners.

Memorandum of convict labor.

2057. SEC. 43. When the labor of any convict or convicts shall be hired out, the warden shall enter upon a book a memorandum of the contract, which memorandum shall show the number of convicts hired out, for how long, at what wages, the name of the convicts, and the name of the party to whom such labor is hired.

Medical attendance.

2058. SEC. 44. The board of commissioners shall have power to make such arrangements for medical attendance as in their judgment may be required, and for that purpose may contract with any regular authorized physician, in such manner as they think most advantageous.

2059. SEC. 45. The physician shall have power and authority to purchase, by concurrence with and by consent

of the board of commissioners, such medicines and other things as in his judgment are necessary for the use of the hospital, and shall furnish the warden immediately with the bills of purchase, who shall compare them with the articles received. Purchase of medical supplies

2060. SEC. 46. The physician shall, when visiting the prison strictly conform to the rules and regulations thereof; he shall express no opinion of the ability or disability of a prisoner, except in his record, which shall be authority. Visits of physician.

2061. SEC. 47. The governor of this state is hereby empowered, whenever it is reported to him by the commissioners or warden, that any person imprisoned in the penitentiary has become insane, to appoint a commission of three practising physicians to examine the said person and report their opinion to the governor in writing, and if from said report the governor shall be of the opinion that said prisoner is insane, and cannot be well taken care of in the penitentiary, it shall be his duty to issue an order to transfer said person without delay to an insane asylum, and upon recovery of said insane prisoner, he shall be returned to the penitentiary for the purpose of serving out his sentence if the same be not expired, and the expense of transferring said prisoner to and from, and maintaining him in such asylum, shall be audited by the board of commissioners, and paid out of any money appropriated for the expense or maintenance of the penitentiary. In case of convict becoming insane; appointment of commission to examine.

2062. SEC. 48. Said commission shall be allowed and paid five dollars a day each for the necessary time employed in each case so examined by them, to be allowed and paid in the same manner as other accounts against said penitentiary. Compensation of commission to inquire of insanity.

2063. SEC. 49. On or before the tenth day of December in each year the board of commissioners shall make or cause to be made a full and detailed account (to be closed on the last day of November of the preceding fiscal year,) of all disbursements and expense, and all receipts and profits of the penitentiary, and of all moneys which have come to their hands, which accounts shall be examined and settled by the auditor, and the same shall be reported Annual account of receipts, disbursements and profits.

to the regular session of the general assembly by the governor.

Protection against fire.

2064. SEC. 50. The board of commissioners shall take such precaution to protect the penitentiary and the property connected therewith against fire as the circumstances and locality will permit of, and will procure such convenience and prescribe such rules, as will enable the warden to get out the convicts in the shortest possible time, and secure their safe custody in case of fire.

Change of location of penitentiary.

2065. SEC. 51. For the purpose of changing the penitentiary from its present location to a point where the labor of the convicts can be made more remunerative to the state, when it shall be deemed advisable by the general assembly to do so, it shall be the duty of the board of commissioners to visit such localities in this state as they may deem advisable, and examine the same with regard to the comparative advantage which such localities present for the location of a penitentiary. They shall also receive offers of donation of land (not less than forty acres,) for a site for such penitentiary, and shall examine the same and report the comparative advantage of each to the governor, who shall report the same to the general assembly at the next session thereof.

Repeal.

2066. SEC. 52. An act relating to the penitentiary and persons convicted of crime, and to provide therefor, approved, February 11, A. D. 1870; an act to employ the labor of convicts in the penitentiary, approved, February 9, A. D. 1872; an act for the government and management of the penitentiary, approved, February 14, A. D. 1874; an act for the pardon of insane criminals, approved, February 9, A. D. 1876; and an act to amend an act for the government and management of the penitentiary, approved, February 9, A. D. 1876, are hereby repealed.

Emergency.

2067. SEC. 53. Inasmuch as the supplies now at the penitentiary will be exhausted within ninety days after the passage of this act, and inasmuch as it is desirable that the semi-annual contracts for the purchase of supplies shall be let on the first day of April and the first day of September in each year, it is the opinion of this general assembly that

an emergency exists as contemplated in section 19, article 5, of the constitution; therefore, this act shall take effect on and after its passage.

Approved, March 15, 1877.

CHAPTER LXXVIII.

POISONS.

AN ACT REGULATING THE SALE OF POISONS.

[Session Laws, 1872.]

Unlawful to retail certain poisons unless distinctly labeled

2068. SECTION 1. From and after the first day of March, A. D. one thousand eight hundred and seventy-two, it shall be unlawful for any apothecary, druggist, or other person, to retail an poison enumerated in schedules A and B, appended to this act, without distinctly labeling the bottle, box, vessel or paper and wrapper, or cover in which said poison is contained, with the name and place of the seller.

Record of poisons sold.

2069. SEC. 2. It shall be unlawful for any apothecary, druggist or other person, to sell or deliver any poisons included in schedule A, without, before delivering to the buyer, making or causing to be made, an entry in a book kept for that purpose only, stating the date of sale, the name and address of the purchaser, the name and quantity of the poison sold, the purpose for which it is stated by the purchaser to be required, and the name of the dispenser; said book to be always open for inspection by the proper authorities, and to be preserved for at least one year: *provided*, that the provisions of this section shall not apply to the dispensing of poisons in not unusual doses or quantities, upon prescriptions of legitimate practitioners of medicine: *And provided further*, that nothing contained in the foregoing sections one and two, shall apply to or interfere with the business or sale of medicines in the original packages of the manufacturer.

These provisions not applicable to regular practitioners.

Fines and penalties.

2070. SEC. 3. Any apothecary, druggist, or other person, who shall violate section one or two, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be

fined a sum not exceeding five hundred dollars, or imprisonment [be imprisoned] in the county jail not exceeding six months.

Penalty for giving fictitious name.

2071. SEC. 4. Any person who, in making application to purchase and receive, or purchase or receive, any of the poisons, substances or liquids, mentioned in schedules A and B, appended to this act, shall give a false or fictitious name or address to the apothecary, druggist, or other person, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined a sum not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment, in the discretion of the judge.

SCHEDULE A.

Enumeration of poisons.

Arsenic and its preparations, prussic acid, cyanides of potassium, and all metallic cyanides, strychnine, and all poisonous vegetable akaloids and their salts, anconite and its preparations, and tartar emetic.

SCHEDULE B.

Belladonna, conium, cantharides, corrosive sublimate, henbane, nux vomica, savin oil, ergot, digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid, oxalic acid, opium, and all preparations of opium, except paregoric and other preparations of opium containing less than two grains to the ounce.

CHAPTER LXXIX.

POWDER-HOUSES.

[Revised Statutes, Chapter LXIX.]

Persons desiring to build powder houses, to have exclusive right to one acre of ground not occupied by prior encumbrancer.

2072. SECTION 1. Whenever any person or company desires to erect and build a powder-house or magazine, for the purpose of storing therein gunpowder, blasting-powder, fuse and the like explosive and combustible materials, such person or company shall have the exclusive right and

control, except as against the United States, of and to one acre of any land, for that purpose, not occupied by any prior encumbrancer, claiming a right thereto, and such person or company may build any such powder-house or magazine thereon, and no other person or company shall have the right to occupy any portion of the said one acre of land for any purpose whatever, except by consent of the person or company erecting and building such powder-house or magazine.

Survey and record of such ground.

2073. SEC. 2. Any person or company claiming a tract of land not exceeding one acre, for the purpose expressed in the foregoing section, shall employ the county surveyor of the county wherein such tract of land is situated to make a survey of the same and a plat thereof, which said plat, when filed for record in the office of the county recorder of the proper county, shall be taken as evidence of the right of the person or company thereto, for whose benefit the said survey is made.

Subject to ordinance if within corporate limits.

2074. SEC. 3. Powder-houses within the corporate limits of any city or town shall be subject to such ordinances as are now passed or may be passed regulating the same.

Form of tract of land and location of building thereon.

2075. SEC. 4. All tracts of land claimed under the provisions of this chapter, shall be in the form of a square, and any powder-house erected thereon shall not be located more than sixty feet from the centre thereof.

The provisions of this chapter to apply only to lands of the United States.

2076. SEC. 5. The provisions of this chapter shall apply only to public lands belonging to the United States; and claims made for the purpose of establishing powder-houses and magazines as aforesaid, shall exist only for the purposes aforesaid, and shall be used only for such purposes; and all right and interest of the claimants therein shall cease and determine, whenever the building or buildings thereon, shall not be used for storing explosives material.

No person to hold more than one tract of land under this chapter in any one mining district.

2077. SEC 6. No corporation, company, firm, association or individual shall hold more than one tract of land under the provisions of this chapter, in any one mining district; nor shall any person or persons holding any tract of land, to be used by any corporation, company, association, firm or individual, hold another tract of land in their own right, under the provisions of this chapter.

CHAPTER LXXX.

PRIZE FIGHTS.

AN ACT TO PREVENT PRIZE FIGHTS.

[Session Laws, 1872.]

Punishment for promoting or engaging in prize fights.

2078. SECTION 1. Any person who shall promote or engage in any prize fight, shall be liable to arrest and prosecution, and upon conviction thereof, shall be punished by confinement in the penitentiary or county jail for a term not less than ten days nor exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Proceedings in case of complaint to magistrate that such offense is about to be committed.

2079. SEC. 2. Upon complaint under oath before any magistrate having power to take complaints of a criminal nature, that an offense within any of the specifications of section first is about to be committed, and setting forth in such complaint the grounds thereof, such magistrate shall, in his discretion be empowered to issue a warrant to any officer of the county having power to execute a warrant, reciting therein the name of the complainant and his residence, and the substance of his complaint, and therein directing such officer to proceed and prevent the said prize fight as mentioned in section first of this act, by arresting any person or persons whom he may find wilfully witnessing the same. Such officer having such warrant, shall have authority to call to his aid the civil power of the county, and upon any arrest or arrests being made in pursuance of this section, the person or persons so arrested shall be taken before the magistrate so having issued the warrant, and in the said magistrates discretion may be then and there compelled to enter into a bond in the sum of one thousand dollars, to the people of the state of Colorado, conditioned that he will not for the space of one year next succeeding the date of said bond, offend against any of the provisions of this act. The said bond, after being taken, to be forwarded to the district attorney of the county, and be by him retained one year, and prosecuted for breaches in any of the courts of this state, if any shall have been committed.

CHAPTER LXXXI.

PUBLIC CONTRACTS.

AN ACT TO PREVENT FRAUDS IN THE LETTING OF PUBLIC CONTRACTS.

[Session Laws, 1872.]

2080. SECTION 1. Whenever any officer of this state or of any county, city, town, or school district therein, shall be charged with the duty of making any contract for, or on behalf of this state, or of any county, city, town or school district therein, whereby this state, or any county, city, town, or school district therein, shall be obliged to pay any sum of money to any person whomsoever, and whenever any such officer, as a member of any board of auditors, commissioners, or directors, or otherwise, shall have any vote or voice in awarding any such contract, it shall not be lawful for any such officer to become in any manner bound for the fulfillment of such contract, or to take or receive any part or portion of the money specified in such contract, or to be in any way, manner, or degree, interested in such contract, excepting in his official representative capacity.

Interest in public contracts, or payment of money, by any state, county, city, town or school district officer, prohibited.

2081. SEC. 2. Whosoever shall offend against the provisions of this act, shall be imprisoned not exceeding six months, and fined not exceeding two thousand dollars, and shall be removed from office.

Penalty for violation of this act.

CHAPTER LXXXII.

PUBLIC HEALTH.

AN ACT TO PRESERVE THE PUBLIC HEALTH.

Be it enacted by the General Assembly of the State of Colorado:

2082. SECTION 1. The county commissioners of any county, respecting which no other provision is or shall be made by law, shall be a board of health for their respective counties, and the county clerk shall be the clerk of such board, and shall keep a record of their proceedings, in a book to be provided for that purpose, at the expense of the county.

County commissioners of any county to be a board of health, where no other provision made by law.

Appointment of physicians as health officers.

2083. SEC. 2. Every board of health may appoint one or more physicians to the board, who shall be the health officer or officers of the county, city or town for which he is appointed, and shall hold his office during their pleasure, and they shall establish his salary, or other compensation, and shall regulate all fees and charges of every person employed by them in the execution of the health laws, and of their own regulations.

Regulations respecting nuisances, sources of filth, and causes of sickness; penalty for violating.

2084. SEC. 3. The board of health shall make such regulations respecting nuisances, sources of filth, and causes of sickness within their respective limits, and on board of any car or train of cars, as they shall judge necessary for the public health and safety; and if any person shall violate any such regulations, he shall forfeit a sum not exceeding one hundred dollars.

Regulations concerning articles capable of containing or conveying contagion, transported in cars or trains; penalty for violating.

2085. SEC. 4. The said board shall also make such regulations as they may deem necessary for the public health and safety, respecting any articles which are capable of containing or conveying any infection or contagion, or of creating any sickness, when such articles shall be brought into or conveyed from their town, city or county, on, into or from any car, or train of cars; and if any person shall violate such regulations, he shall forfeit a sum not exceeding one hundred dollars.

Destruction, removal or prevention of nuisances, sources of filth, etc.

2086. SEC. 5. The board of health shall examine into all nuisances, sources of filth, and causes of sickness that may, in their opinion, be injurious to the health of the inhabitants within their town, city or county, or in any car or train of cars within said town, city or county, and the same shall destroy, remove or prevent, as the case may require.

Removal of nuisances, sources of filth, etc., from private property upon order of board of health; penalty for default

2087. SEC. 6. Whenever any such nuisance, source of filth, or cause of sickness, shall be found on private property, the board of health shall order the owner or occupant, or such other person or persons who shall have caused or permitted said nuisance, at his own expense, to remove the same within twenty-four hours; and in default thereof, he, she or they, shall forfeit a sum not exceeding one hundred dollars, at the suit of the county commissioners of the proper county, and for the use of the board of health of

said county, or the board of health (if one exists) of the city or town wherein the nuisance was found.

Removal of nuisances, etc., by board of health, and payment of expense thereof.

2088. SEC. 7. If the owner or occupant shall not comply with such order of the board of health, such board may cause the said nuisance, source of filth, or cause of sickness, to be removed, and all expense incurred thereby shall be paid by the said owner or occupant, or by such other person as shall have caused or permitted the same.

Order of court for removal or abatement of nuisance, etc., in cases of conviction on indictment.

2089. SEC. 8. Whenever any person shall be convicted on an indictment for common nuisance that may be injurious to the public health and safety, the court may, in its discretion, order it to be abated, removed or destroyed, at the expense of the defendant, under the direction of the board of health, of the town, city or county, where the nuisance is found; and the form of the warrant to the sheriff or other officer may be varied accordingly.

Complaint to be made in case of refusal to permit entry of board of health into building or train of cars for purpose of examination, etc.

2090. SEC. 9. Whenever the board of health shall think it necessary for the preservation of the lives or health of the inhabitants to enter any building, car or train of cars, in their town, city or county, for the purpose of examining into, and abating, destroying, removing or preventing any nuisance, source of filth, or cause of sickness, or danger to life or limb, and shall be refused such entry, any member of the board may make complaint, under oath, to any justice of the peace of his county, whether such jnstice be a member of such board or not, stating the facts of the case, so far as he has knowledge thereof.

Warrant to sheriff or constable for removal or destruction of nuisance, etc.

2091. SEC. 10. Such justice may thereupon issue a warrant, directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by any two or more members of said board of health, between the hours of sun rise and sun set, to repair to the place where such nuisance, source of filth, or cause of sickness, or danger to life or limb complained of may be, and destroy, remove or prevent the same, under the direction of such members of the board of health.

Permits for removal of infected article or sick person.

2092. SEC. 11. The board of health may grant permits for the removal of any infected article or sick person, within the limits of their town, city or county, when they shall think it safe and proper so to do.

Removal of sick or infected person to, and care of, at separate house.

2093. SEC. 12. When any person coming from abroad or residing within any town, city or county within this state, shall be infected, or shall lately before have been infected with the small-pox, or other sickness dangerous to the public health, the board of health of the town, city or county where such person may be, shall make effectual provisions in the manner in which they shall judge best for the safety of the inhabitants, by removing such sick or infected person to a separate house, if it can be done without danger to his health, and by providing nurses and other assistance necessary, which shall be at the charge of the county to which he belongs.

In cases where infected person cannot be removed without endangering health.

2094. SEC. 13. If any such infected person cannot be removed without danger to his health, the board of health shall make provision for him as directed in the preceding section, in the house in which he may be, and in such case they may cause the persons in the neighborhood to be removed, and may take such other measures in respect to the same as they may deem necessary for the safety of the inhabitants.

Examination and license to travel, of persons passing into this state from infected places in other states.

2095. SEC. 14. The board of health of any town, city or county, near to or bordering upon either of the neighboring states or territories, may appoint, by writing under their hands, suitable persons to attend any places by which travelers may pass into this state from infected places in other states; and the person so appointed may examine such passengers as they may suspect of bringing with them any infection which may be dangerous to public health, and if need be, restrain them from traveling until licensed thereto by the board of health of the town, city or county, to which such person may come; and any person coming from such infected place, who shall, without license as aforesaid, travel within this state, unless it be to travel by the most direct way to the state from whence he came, after he shall be cautioned to depart by the persons appointed as aforesaid, shall forfeit a sum not exceeding one hundred dollars.

2096. SEC. 15. Any justice of the peace may make out a warrant under his hand, directed to the sheriff or any constable of the county in and for which he is a justice of

the peace, requiring him, under the direction of the board of health, to remove any person infected with contagious sickness, or take possession of convenient houses and lodging; and provide nurses, attendants and other necessaries for the accommodation, safety and relief of the sick.

Issue of warrant to sheriff or constable for removal of person infected with contagious sickness, etc.

2097. SEC. 16. Whenever, on application of the board of health, it shall be made to appear to any justice of the peace that there is just cause to suspect that any baggage, clothing or goods of any kind, found within the town, city, or county are infected with any disease which may be dangerous to the public health, such justice of the peace shall, by warrant under his hand, directed to the sheriff or any constable of the county, require him to take with him as many men as the said justice shall deem necessary to secure such baggage, clothing or other goods, and to post said men as a guard over the house or place where such baggage, clothing or other goods shall be lodged, which guard shall take effectual care to prevent any person removing, or coming near to such baggage, clothing or other goods, until due inquiry be made into the circumstances thereof, and they shall be discharged therefrom.

Precautions to be taken in case of suspicion of infected baggage, clothing or goods.

2098. SEC. 17. The said justice may also, by the same warrant, if it shall appear to him necessary, require the the said officer, under the direction of the board of health, to impress or take up convenient houses or stores for the safe keeping of such baggage, clothing or other goods; and the board of health may cause them to be removed to such houses or stores, or be otherwise detained until they shall, in the opinion of the board of health, be freed from infection.

Impressment of houses and stores for safe keeping of such baggage, etc.

2099. SEC. 18. Such officer, in the execution of such warrant, shall, if need be, in the day time, break open any house, shop or any other place mentioned in said warrant, where such baggage, clothing or other goods shall be; and he may require such aid as shall be necessary to effect the execution of the warrant, and all persons shall, at the command of any such officer, under a penalty not exceeding ten dollars, assist in the execution of the warrant, if able to do so.

Forcible entry authorized.

Payment of charges for securing such baggage, etc.

2100. SEC. 19. The reasonable charges of securing such baggage, clothing or other goods, and of transporting and purifying the same, shall be paid by the county.

Compensation for rent, nurses or attendants, etc.

2101. SEC. 20. Whenever the sheriff or other officer shall take possession of houses, stores, lodgings or other necessaries, or shall employ any nurse or attendants, as provided in this act, the several parties interested shall be entitled to a just compensation therefor, to be paid by the county in which such person or property shall have been so employed or taken possession of.

Removal of prisoner attacked with disease endangering health of other prisoners.

2102. SEC. 21. Whenever any person confined in any common jail, shall be attacked with any disease, which, in the opinion of the physician of the board of health, or such other physicians as they may consult, shall be considered dangerous to the safety and health of the other prisoners, or of the inhabitants of the town, city or county in which such jail is situated, the board of health shall, by their order, in writing, direct the removal of such person to some hospital, or other place of safety, there to be provided for, and securely kept, so as to prevent his escape, until their further orders; and if such prisoner shall recover from the disease, he shall be returned to such jail.

Order for removal to be returned to clerk district court.

2103. SEC. 22. If the person so removed shall have been committed by order of any court, or under any judicial process, the order for his removal, or a copy thereof, attested by the presiding member of said board of health, shall be returned by him, with the doings thereon, into the office of the clerk of the district court of the county; and no prisoner, removed as aforesaid, shall be considered as thereby having committed an escape.

Removal of paupers or sick from poor house or hospital in case of pestilence.

2104. SEC. 23. Whenever any pestilence or contagious disease shall break out in any county, poor house or hospital in this state, or in the vicinity thereof, and the physician of such county poor house or hospital, or such other physicians as the superintendents may consult, shall certify that such pestilence or disease is likely to endanger the health of the persons supported at such poor house or hospital, the superintendents of such county poor house or hospital shall cause the persons there supported, or any of them, to be removed to some other suitable place in the same coun-

ty, and there to be maintained and provided for at the expense of the county, with all necessary medical attendance and care, until they can safely be returned to such poor house or hospital, or otherwise discharged.

Establishment of hospital.

2105. SEC. 24. The inhabitants of any town, city or county, may establish in such locality as the board of health may deem best, and be constantly provided with one or more hospitals for the reception of persons having the small-pox or other diseases which may be dangerous to the public health.

Rules, regulations and location of hospital.

2106. SEC. 25. All such hospitals shall be subject to the rules and regulations of the board of health, or a committee appointed by such board for that purpose; but no such hospitals shall be established within one hundred rods of any inhabited dwelling house, situated in an adjoining county, without the consent of such adjoining county.

Penalty for inoculation with small pox, except at authorized hospital.

2107. SEC. 26. If any person shall inoculate any other person, or inoculate himself, or suffer himself to be inoculated, with the small-pox, unless at some hospital licensed and authorized by law, he shall, for each offense, forfeit a sum not exceeding two hundred dollars.

Who subject to hospital regulations of board of health.

2108. SEC. 27. When any hospital shall be so established, the physician attending the same, the persons inoculated or sick therein, the nurses, attendants, and all persons who shall approach or come within the limits of the same, and all such furniture or other articles as shall be used or brought there, shall be subject to such regulations as shall be made by the board of health, or of the committee appointed for that purpose.

Precautions to be taken in case of breaking out of small pox or other dangerous disease, in county, city or town.

2109. SEC. 28. When small-pox or any other disease dangerous to the public health, shall break out in any town, city or county, the board of health shall immediately provide, furnish and maintain, a suitable and comfortable hospital building and place of reception for the sick and infected, and shall provide a sufficient number of good and efficient nurses and attendants therefor (and when specially requested so to do, permit such nurses and such medical care as the family or near friends of the patient may desire,) as they shall judge to be adequate and sufficient for the due care and accommodation of the said sick and

infected persons, and for the safety of the inhabitants; and the said hospitals shall be subject to the regulations of the board of health in the same manner as hereinbefore provided for established hospitals.

Prevention of spreading of infection.

2110. SEC. 29. When the small pox or any other disease dangerous to the public health is found to exist in any town, city or county, the board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travelers, by such means as in their judgment shall be most effectual for the common safety.

Penalty for violation of hospital regulations.

2111. SEC. 30. If any physician or other person in any of the hospitals or places of reception before mentioned, or who shall attend, approach or be concerned with the same, shall violate any of the regulations lawfully made in relation thereto, either with respect to himself, or to his or any other person's property, the person so offending shall, for each offense, forfeit a sum not less than ten nor more than one hundred dollars.

Notification of board of health or health officers in case of dangerous disease or existence of nuisance; penalty for refusal or neglect

2112. SEC. 31. Whenever any physician or any other person shall know that any person is taken sick with small-pox, or any other disease dangerous to the public health, or of the existence of any nuisance dangerous to the public health, he shall immediately give notice thereof to the board of health or to the health officer of the town, city or county in which he resides; and if he shall refuse or neglect to give such notice, he shall forfeit a sum not exceeding one hundred dollars.

Penalty for failure of householder to give notice of dangerous sickness in family

2113. SEC. 32. Whenever any householder shall know that any person within his family is taken sick with small-pox, or any other disease dangerous to the public health, he shall immediately give notice thereof to the board of health, or health officer of the town, city or county, in which he resides: and if he shall refuse or neglect to give such notice, he shall forfeit a sum not exceeding one hundred dollars.

Inoculation with cow pox.

2114. SEC. 33. Every board of health of any town, city or county, may make suitable provision, at any meeting, for the inoculation of the inhabitants with cow-pox, under the direction of the local board of health, or health officer.

Assignment of places for exercise of trades, etc., dangerous to public health.

2115. SEC. 34. The board of health of any town, city or county, respectively, when they shall judge it necessary, shall, from time to time, assign certain places for the exercise of any trade or employment dangerous to the public health; and they shall forbid the exercise thereof in places not so assigned; and all such assignments shall be entered in the records of the town, city or county, and they may be revoked when the board of health making such assignment shall think proper.

Revocation of assignment by the district court

2116. SEC. 35. When any place or building so assigned shall become dangerous to the neighborhood or to travelers, and the same shall be made to appear on a trial, or on the admission of the persons exercising such trade or employment, before the district court of the county, upon a complaint made by the board of health, or by any other person, the said court may revoke such assignment, and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or abated.

Who may have action for damages sustained by nuisance; what defendant may plead

2117. SEC. 36. Any person injured, either in his comfort or in the enjoyment of his estate, by any such nuisance, may have an action on the case for the damages sustained thereby, in which action the defendants may plead the general issue and give any special matter in evidence.

Who to have and exercise powers and duties of board of health in absence of other provision by law.

2118. SEC. 37. The mayor and aldermen of each incorporated city, and the president and council, or trustees of each incorporated town in this state, respecting which no other provision is or shall be made by law, shall have and exercise all the powers and perform all the duties of a board of health, as provided in this act, within the limits of the cities or towns respectively of which they are such officers, and in all parts and portions of each and every county not represented by town or city organization, the board of health shall consist of the county commissioners and clerk of the county.

Registry of births and deaths; by whom to be kept and what to contain.

2119. SEC. 38. It shall be the duty of all physicians, surgeons, and midwives to keep a registry of all births and deaths at which they have professionally attended, showing, in cases of birth, the time and place of birth, name of the father, and maiden name of the mother, and their residence,

the sex, and color of the child, and whether it be born alive or dead; and showing, in cases of death, the time, place and cause of death, when and where the disease was contracted, the name, age, sex, color, and condition, (whether single, married or widow), occupation, residence, and place of birth of the deceased: *provided*, that when two or more surgeons, physicians, or midwives may have attended professionally at any birth or death, that surgeon, physician, or midwife, who is oldest in attendance, shall make the registry.

Report of births and deaths; by whom and when to be made.

2120. SEC. 39. It shall be the duty of the physicians, surgeons, and midwives to deposit with the clerk of the board of health of the county, town or city, in which such births or deaths occur, respecting which no other provision is, or shall be made by law, quarterly reports of such births and deaths, on or before the last day of March, June, September and December of each and every year.

Annual reports of boards of health to state board of health.

2121. SEC. 40. All boards of health which exist now or may be established by the provisions of this law, shall make an annual report to the state board of health, on or before the thirty-first day of December in each and every year, containing all marriages, and all births and deaths occurring in their respective districts, giving such facts as are set forth in section 38 of this act, and such other information as shall be of interest to the public.

Provision and distribution of blanks.

2122. SEC. 41. The auditor of the state shall cause to be provided suitable blanks, with separate columns for each of the items of information required, and shall send a sufficient number of said blanks to the clerk of each county for distribution.

Penalty for failure to discharge acts and duties imposed by this act.

2123. SEC. 42. Any person failing to discharge and perform any of the acts and duties imposed by sections thirty-eight and thirty-nine of this act, shall for every such failure be deemed guilty of a misdemeanor, and upon conviction thereof, fined in a sum of not less than five or more than twenty dollars.

Approved, February 24, 1877.

CHAPTER LXXXIII.

PUBLIC LANDS.

[Revised Statutes, Chap. LXXII.]

Paramount right of United States to dispose of the soil of this state; rights of citizens to occupy and possess the same under local laws.

2124. SECTION 1. Conceding to the United States of America the primary and paramount right to dispose of the soil of this state, according to the laws existing or to be enacted by congress, and full and complete exemption from every form of taxation of their property, it is hereby declared that as between all the good citizens now residing in, or who shall hereafter come to reside in this state, and as between them, or any of them, and others, having or claiming, or now or hereafter pretending to have or claim, any right to occupy, possess and enjoy any portion of the public domain situate within the boundaries of this state, and as between each and every of them, and all other persons, associations, corporations and powers, except the government of the United States of America, the right as the same may exist under the local laws, to occupy, possess and enjoy any tract or portion thereof, shall be respected in law and equity in all the courts and tribunals of this state.

Right of occupancy, etc.; how manifested.

2125. SEC. 2. All rights of occupancy, possession and enjoyment of any tract or portion of the said public domain, except mining claims, acquired after the adoption of this chapter, shall be expressed and described in a declaration, in cases of original occupation, and by a deed in cases of purchase, duly acknowledged by some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the land is situated.

Sale of claim or improvement on public land.

2126. SEC. 3. The owner of every claim or improvement, on every tract or parcel of land, has a transferable interest therein, which may be sold in execution or otherwise; and any sale of such improvement is a sufficient consideration to sustain a promise.

2127. SEC. 4. All rights of occupancy, possession and enjoyment of any tract or portion of the said public domain, acquired before the seventh day of November, A. D. 1861, shall be ascertained, adjudged and determined by the

Rights of occupancy heretofore existing; by what laws to be determined and adjudged.

local law of the district or precinct in which such tract is situated, as it existed on the day when such rights were acquired, or as it thereafter may have existed; and if there were no local laws at that time, then by the common custom then prevailing in respect to such property in the district or precinct in which it existed. All such rights of occupancy, possession and enjoyment, acquired since the said seventh day of November, A. D. 1861, shall be ascertained, adjudged and determined by the laws of this state in force at the date of such acquisition.

Form of declaration of occupant.

2128. SEC. 5. The declaration of an occupant of a tract or portion of the public domain, required by the second section of this chapter, shall be substantially in the following form:

To all whom these presents may concern:

Know ye, that I, A. B., of ———, in the county of ———, in the state of Colorado, do hereby declare and publish as a legal notice to all the world, that I have a valid right to the occupation, possession and enjoyment of all and singular that tract or parcel of land, not exceeding one hundred and sixty acres, situate, lying and being in the township of ———, in the county of ———, in the state of Colorado, bounded and described as follows: (here insert the description,) together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand and seal, this —— day of ———, in the year one thousand eight hundred and ———. (To be subscribed with the full christian and surname of the person making the application, and acknowledged in the same manner as a deed of real estate.)

What to be received as evidence of regularity of deed, declaration, etc.; burden of proof of irregularity to be upon party objecting.

2129. SEC. 6. In all legal or equitable proceedings hereafter instituted in any court in this state, the record of any declaration, deed or mortgage, or other muniments of right, referred to in the third and fifth sections of this chapter, shall be received, except as against the United States, and all persons claiming under the United States, as presumptive evidence of the regularity of the paper itself, under the local law or custom existing at the time of its exe-

cution; and if the regularity thereof shall be challenged, the burden of proving the alleged irregularity shall rest upon the party making the challenge.

Gold and silver lodes not to be included in declaration of occupant.

2130. SEC. 7. The declaration of every occupant of any tract or portion of the public domain, mentioned in section five of this chapter, shall not be construed to include any gold-bearing quartz lodes, silver lodes or gold diggings; but said lodes and diggings shall be excepted from the tract of said occupant, and shall be subject to be occupied, possessed and enjoyed as hereinafter provided.

What actions for injuries to possession may be maintained.

2131. SEC. 8. Any person settled upon any of the public lands belonging to the United States may maintain trespass *quare clausum fregit*, trespass, ejectment, forcible entry and detainer, unlawful detainer and forcible detainer, for injuries done to the possession thereof.

Extent of boundaries of possessory right of plaintiff.

2132. SEC. 9. On the trial of any such cause the possession or possessory right of the plaintiff shall be considered as extending to the boundaries embraced by the claim of such plaintiff, so as to enable him to have and maintain either of the aforesaid actions, without being compelled to prove an actual inclosure. *Provided*, that each claim shall not exceed in any case one hundred and sixty acres of land.

Boundaries of claim to be marked; what occupancy sufficient to enable party to maintain action.

2133. SEC. 10. Every such claim, to entitle the holder to maintain either of the aforesaid actions, shall be marked out so that the boundaries thereof may be readily traced, and the extent of such claim easily known; and no person shall be entitled to maintain either of said actions for possession of, or injury done to, any claim, unless he occupy the same, or shall have made improvements thereon to the value of one hundred dollars.

What considered as abandonment of claim.

2134. SEC. 11. A neglect to occupy such claim, or to inclose at least five acres with a reasonable fence, or plough at least five acres of the same for the period of six months, shall be considered such an abandonment as to preclude the claimants from maintaining either of the aforesaid actions.

2135. SEC. 12. Any person who may have a title to occupy any lot or lots within any city or village plot, or any lots or mining claim within any mining district in this state in virtue of a certificate, deed of gift or purchase from

Who may maintain action for injuries to possession; forfeiture of rights of claimants in case of abandonment.

the original claimant or claimants, or their assigns, as well as all purchasers, under any decree or execution of any of the so-called provisional government courts, people's or miners' courts, of the lands situate within any city or village plot, or any lots, lands or mining claims situate within any mining district, together with the original claimant or claimants of said lots, lands or mining claims, shall be entitled to maintain the actions authorized by the eighth section of this chapter against any and all persons who shall enter upon and occupy said lots, lands or mining claims, or any of them; *provided*, it shall be lawful for the citizens of any mining district to declare an abandonment of any creek, river, gulch, bank or mining claim a forfeiture of the rights of the claimants thereto; in which case the parties claimant shall not be enabled to maintain either of the actions mentioned in section eight of this chapter.

Title to lands, lots, etc., remaining in the United States not to bar action; this act void as against the United States.

2136. SEC. 13. Nothing in this chapter contained shall be construed to deny the right of the United States to dispose of any lands in this state; nor shall the fact that the title to any lots, lands, lodes or mining claims hath not passed from the United States, be any bar to the recovery of the plaintiff in either of the actions specified in section eight of this chapter. As against the United States, and all persons holding any of said lands under the United States, or the laws thereof, this chapter shall be of non-effect and void.

Sections ten and eleven applicable only to arable or pastoral lands

2137. SEC. 14. Sections ten and eleven of this chapter are not intended, and shall not be construed, to affect or apply to mining claims; but shall affect and be applicable to claims held or used for arable or pastoral agriculture only.

Bond to be given in case of persons desiring to mine on claim held for pastoral or agricultural purposes.

2138. SEC. 15. Whenever any improvements may be made upon any claim held or used for arable or pastoral agriculture, or upon any building lot, mill site or other lot or premises, and any person or persons shall demand of the claimant thereof to mine any portion of said claim, upon which such improvements may have been made, it shall be lawful for the occupant or holder of such claim to require a good and sufficient bond, in a sum double the value of the improvements upon the land sought to be mined, from

the party or parties demanding to mine upon such claim, with two or more sureties, to be approved by any justice of the peace of the township in which the claim is situate, conditioned that the said party or parties shall pay all damage which may be sustained by the occupant or holder of such claim, to the improvements thereon.

Hearing of testimony touching value of improvements.

2139. SEC. 16. It shall be the duty of the said justice of the peace, by whom the bond is required to be approved, as is above recited, in case the value of the improvements cannot be agreed upon by the claimant and the party or parties seeking to mine, to appoint a day and hour to hear testimony respecting the value of the improvements which may be damaged by reason of such mining.

Justification of sureties on bond.

2140. SEC. 17. It shall be the duty of the justice to require the sureties entering into such bond as is above required, to justify before him, each in the sum stated in said bond; and if the claimant shall except to the said sureties, or either of them, it shall be lawful for said justice, and he is hereby required to examine said surety or sureties excepted to, on oath, touching the sufficiency of said surety or sureties; and if the justice shall find either or both of said sureties insufficient, it shall be the duty of the justice to require further sufficient surety or sureties, which shall be likewise approved, and shall justify, as is above required.

Weekly payment of damages to improvements by obligees of bond.

2141. SEC. 18. It shall be competent for said claimant to demand from the obligees in said bond, at any time after one week after mining shall be commenced on said claim, such sum as may be equal to the damage done the improvements thereon, and after every week it shall be competent for said claimant to make the like demand, unless the payment of the damage done or to be done said improvements, shall, by the claimant, be postponed for a longer time.

Purchaser at public sale of lands dedicated to public uses, to pay for improvements thereon.

2142. SEC. 19. That when any person hath heretofore, or shall hereafter, settle upon and improve any of the public lands which have been, or shall hereafter be, donated by act of congress to public uses, for educational or other purposes, and upon any sale of such lands by public authority, subsequent to such settlement and improvement, if the person settling upon such lands shall not become the purchaser, the person becoming the purchaser of such lands

shall pay to such settler the reasonable value of his improvements thereon.

Value of improvements recoverable by action, in case of disagreement.

2143. SEC. 20. Whenever the parties cannot agree as to the reasonable value of such improvements, the same shall be recoverable by an action of *assumpsit* in the district court of the proper county.

Purchaser to have immediate possession.

2144. SEC. 21. Nothing herein contained shall be construed to interfere with the right of the purchaser of any such lands to the immediate possession thereof, upon the completion of his purchase.

AN ACT TO PROVIDE FOR THE RECORDING OF GOVERNMENT PATENTS.

[Session Laws, 1872.]

When United States patent for lands to be recorded.

2145. SECTION 1. That any person to whom any patent to any land, whether agricultural or mineral, situate in this state, may have been issued, or may hereafter issue from the government of the United States, may have the same recorded in the office of the recorder of deeds, of the county wherein such lands are situate, upon presentation of the same at the proper office.

Patent, or copy of record thereof to be evidence.

2146. SEC. 2. Any patent may be read in evidence in the first instance, without further proof of its execution; and a copy of the record of such patent shall be entitled to be read in evidence, under such regulations as are now or may hereafter be provided for the admission of a copy of the record of deeds.

To apply to patents already recorded.

2147. SEC. 3. The provisions of this chapter shall be held to apply to patents already recorded.

Fees of recorder

2148. SEC. 4. The fees of the recorder of deeds for the record of such patents, shall be the same as fixed for the record of deeds, together with the sum of three dollars for record of any plat contained in such patent.

AN ACT TO PREVENT THE FIRING OF TIMBER OR PRAIRIES.

Be it enacted by the General Assembly of the State of Colorado:

2149. SECTION 1. That any person or persons who shall wilfully or carelessly set on fire, any body of timber

or prairie on any of the lands in this state, shall, upon conviction thereof, be fined not less than fifty nor more than three hundred dollars, or may be imprisoned not less than fifteen days nor more than three months, and may be punished by both fine and imprisonment in the discretion of the court. Punishment for firing of timber or prairie on any lands in this state.

2150. SEC. 2. If any person shall set on fire any woods or prairie so as to damage any other person, such person shall make satisfaction for the damage to the party injured, to be recovered in an action before any court of competent jurisdiction. Damages to persons injured.

2151. SEC. 3. Any person who shall set fire on any of the lands belonging to the state, or of the public domain, thereby destroying the timber or grass thereon, shall be liable to an indictment therefor, and upon conviction thereof, shall be fined a sum not less than fifty dollars and not exceeding five hundred dollars, or be confined in the county jail not less than twenty days and not exceeding six months, or fine and imprisonment, at the discretion of the court, to be paid to the county treasurer of the county in which the offense was committed, and placed to the credit of the school fund of said county. Punishment for firing any lands belonging to state or public domain.

2152. SEC. 4. All acts or parts of acts conflicting with this act are hereby repealed. Repeal.

Approved, March 14, 1877.

AN ACT TO PROVIDE FOR THE SELECTION, LOCATION, APPRAISAL, SALE AND LEASING OF STATE LANDS.

Be it enacted by the General Assembly of the State of Colorado:

ARTICLE I.

2153. SECTION 1. The funds arising from the sale of all lands granted by the United States to the state of Colorado for specific purposes, shall be held intact for the purposes for which they were granted, after the lands shall have been selected and assigned to the fund for which they were granted, and shall not be transferred to the credit of any other fund, nor shall the proceeds of the sale of such lands be applied to any other than the purposes for which the lands were granted. Disposition of funds arising from sale of lands granted to the state for specific purposes

Exemption from taxation.

2154. SEC. 2. All lands belonging to the state of Colorado shall be held exempt from state, county or local taxation.

In what manner proceeds of sale of lands to be invested.

2155. SEC. 3. The proceeds arising from the sale of all lands granted to the state for school and university purposes, shall be invested first in the bonds of the state of Colorado, and second in the bonds of the United States, and the interest only shall be used for the purposes for which the grant was made; and the proceeds of the sale of all other state lands shall be invested in the same securities until otherwise appropriated by the general assembly.

When sale of lands to be made

2156. SEC. 4. No sale of school lands, lands granted for internal improvements, for public buildings or university lands, shall be made prior to March 1, 1879, except as hereinafter provided.

Manner of issuing patents.

2157. SEC. 5. All patents for lands sold by the state shall issue in the name of the state of Colorado, and shall be signed by the governor, whose signature shall be attested by the secretary of state, and the seal of the state of Colorado.

ARTICLE II. DUTIES OF THE STATE BOARD OF LAND COMMISSIONERS.

Who to constitute board.

2158. SECTION 1. The governor, superintendent of public instruction, secretary of state and attorney-general shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by this act.

Duties of board.

2159. SEC. 2. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or other disposition of all the lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor.

Organization.

2160. SEC. 3. The governor shall be *ex officio* president of the state board of land commissioners, and the meetings of the board shall be regulated by such rules as the board itself may adopt.

2161. SEC. 4. The first meeting of the state board of

land commissioners shall be held on the call of the governor, and thereafter at such times and places as the board may direct. Meetings.

2162. SEC. 5. All powers now vested or hereafter to be vested in the state board of land commissioners, may be executed by a majority of the board. Execution of powers by majority.

2163. SEC. 6. The state board of land commissioners shall keep a record of their proceedings in a book kept for that purpose, and shall preserve all papers and documents submitted to them; all expenses necessarily incurred in the discharge of the duties that are or shall be enjoined on them by law, shall be audited by the state auditor and paid by a warrant on the state treasurer. Record of proceedings; payment of expenses.

2164. SEC. 7. The state board of land commissioners shall designate what portions of such lands as may be selected by the state, shall be assigned to each specific fund designated in the grants made by the United States. Designation of lands and assignment to specific fund.

ARTICLE III. APPRAISAL AND SELECTION.

2165. SECTION 1. The board may appoint six assistant land commissioners, two of whom shall be surveyors of experience and ability, who shall proceed in such manner as the board may direct, to examine and report to the state board such lands as may be suitable for selection. Appointment of assistant land commissioners.

2166. SEC. 2. The state board of land commissioners shall keep an office at the seat of government, at which shall be kept all maps, plats, books, records, documents and papers pertaining to the office, subject at all times to inspection, the same as other public records. Office of state board; where to be kept.

2167. SEC. 3. The assistant land commissioners, other than the surveyors, shall receive the sum of four dollars per day for time actually employed, and the surveyors shall receive the sum of six dollars per day. Compensation of assistant commissioners and surveyors.

2168. SEC. 4. The board shall be furnished by the state with all necessary blanks, books and stationery, and furnish a team and driver to accompany each expedition for the examination, survey and location of land; and all the necessary expenses attending the examination, survey, location and sale of state lands shall be paid on the war- Books, blanks, stationery and transportation; payment of expenses of examining, surveying and locating lands.

rants of the auditor issued on vouchers certified to by the state board.

How and what order lands to be selected.

2169. SEC. 5. The state board shall provide as complete a set of plats for field use as may be necessary, of the surveyed lands in the state, together with such blanks as may be necessary for the examination of said lands; shall ascertain as far as practicable what of the unappropriated government lands in the state are capable of irrigation, and the sources and reliability of the supply of water for the same; and shall select what lands may be suitable under the various grants made by the general government to the state, in the following order:

First—Lands granted in sections eight, nine and ten of the act of congress, of March 3, 1875, "to enable the people of Colorado to form a constitution and state government, and for the admission of said state into the Union on an equal footing with the original states."

Second—Lands granted under the act approved September 4, 1841, "to appropriate the proceeds of the public lands, and to grant pre-emption rights."

Third—Lands to be selected by the state under section seven of the first above named acts, in lieu of those disposed of by the United States, in sections sixteen and thirty-six of each township in the state.

Fourth—To select any and all lands that may be granted to the state by the United States.

Procuring of patents from the United States.

2170. SEC. 6. When the selection of lands has been made and approved by the state board of land commissioners, the governor shall take the necessary steps to procure the approval of the said selection by the president of the United States, and the issuance of patents for the same by the United States to the state of Colorado.

Permanent records of selected lands.

2171. SEC. 7. When all of said lands have been selected and the title assured to the state, the state board shall cause to be prepared a complete set of plats of the state lands of a permanent character, and a set of books, which shall show the character of the soil, grass, timber, water, the source and supply of water for irrigation, the presence of stone, lime or any useful mineral products, and in general, all facts that may effect the value of the lands, and

shall show on the plats which lands have been selected under each specific grant of the United States.

Oath of assistant land commissioners, etc.

2172. SEC. 8. The assistant land commissioners and all persons employed in the selection of the lands of the state, shall before preceding with their duties take and subscribe the oath prescribed by the constitution for civil officers, and shall file the said oath, certified by the person before whom the oath shall be taken, in the office of the secretary of state.

False return of survey or appraisal deemed perjury.

2173. SEC. 9. In case any person appointed to select and appraise any state lands shall wilfully and knowingly make a false return of any survey or an appraisal of the value of land at variance from the true value thereof, or without having personally surveyed or examined the same, he shall be deemed guilty of wilful perjury.

Annual report of state board.

2174. SEC. 10. The state board shall annually on the first day of December publish a full report of its transactions, showing the amount of lands belonging to the state, to what funds they belong, their value, and the amount sold during the year.

ARTICLE IV.

Sale of lands at public auction.

2175. SECTION 1. The state board of land commissioners may from time to time direct the sale of the lands belonging to the state and not otherwise directed to be disposed of, at public auction, in such parcels as they shall deem most for the interest of the state, and for the promotion of the settlement thereof, but not more than forty thousand acres shall be sold at any one auction, and each lot of one hundred and sixty acres shall be separately exposed to sale. Smaller lots shall only be sold when it is impracticable to sell as prescribed above, and not more than one hundred and sixty acres shall be sold to any one person, except as provided in section twenty-two of this article.

Establishing of minimum price of lands; publication of notice of sale.

2176. SEC. 2. The state board of land commissioners shall previous to every sale prepare a statement of the price of each lot, below which it shall not be sold; and they shall also designate the newspapers in which the notices of the sale shall be published, but they shall in all cases designate at least one newspaper published in the

county where the lands to be sold are situated, or if there be no newspaper therein, then they shall designate at least one newspaper that shall be published nearest to such lands.

Where sales to be held; amonnt of purchase money to be paid at time of sale.

2177. SEC. 3. All public sales of lands belonging to this state shall be held at the capitol of the state, except as hereinafter provided, and unless otherwise directed by the state board of land commissioners, and the amount of purchase money to be paid at the time of sale shall in no case be less than thirty per cent. of the whole purchase money: *Provided*, that in the case of timbered lands the whole purshase money shall be paid at the time of sale.

Notice of sale

2178. SEC. 4. The state board shall give eight weeks' previous notice of the time, place and condition of such sale, to be published in such newspapers as the said board shall have selected and prescribed.

Time and manner of payments for lands purchased

2179. SEC. 5. Within forty-eight hours after each sale the purchaser of each tract shall pay to the state treasurer the first payment required thereon, and execute a penal obligation conditioned for the payment of the residue of the purchase money to the people of the state of Colorado, in seven equal annual payments, with interest at the rate seven per cent. per annum, which obligation shall be deposited with the state auditor. If any purchaser shall refuse or neglect to make such payment or to deliver such obligation as aforesaid, he shall for every such refusal or neglect forfeit the sum of one hundred dollars for each lot so by him purchased, to be recovered with costs of suit instituted by the attorney general, in the name of the people of the state.

Penalty for refusal to make payment.

Certificate of purchase.

2180. SEC. 6. The state auditor on the delivery to him of such obligation and on receipt of such payment by the treasurer, shall give such purchaser a certificate contaiinng the name of the purchaser, a description of the land purchased, the sum paid, and the sum remaining due thereon.

Issuance of patents when full payment is made.

2181. SEC. 7. Whenever any purchaser, at a sale made by the state board, or the representatives or assigns of such purchaser, shall produce to the state auditor a certificate with the receipt of the treasurer endorsed thereon for the

whole of the money due thereon, it shall be the duty of the auditor to cancel the obligation executed by such purchaser on the sale, and letters patent for the land described in the certificate shall be issued.

Issuance of patents in case of loss or wrongful detention of certificate.

2182. SEC. 8. Whenever such certificate shall be lost or wrongfully withheld by any person from the owner thereof, the state board of land commissioners may receive evidence of such loss or wrongful detention, and on satisfactory proof of the fact, may cause a patent to issue to such person as shall appear to them to be the proprietor of the land described in the original certificate.

Suit upon obligations remaining unpaid for one year after due, or sale of land and forfeiture of previous payments.

2183. SEC. 9. If any one payment stipulated in any obligation received by the state auditor upon any sale of lands, shall remain unpaid one year after the same is due, the state board of land commissioners may direct the attorney general to put such obligation in suit, or may sell again the land for the payment of which such obligation shall have been given, *provided*, that such sale shall not be made unless the occupation of the land shall have been abandoned for a full year, and in case of such sale, all previous payments made on account of such land shall be forfeited to the particular fund to which the land may belong.

Hearing and determination of claims to any lands owned by the state.

2184. SEC. 10. The state board of land commissioners may hear and determine the claims of all persons who may claim to be entitled in whole or in part to any lands owned by this state, and shall have power to establish such rules as in their opinion may be proper to prevent fraudulent applications under the preceding sections.

Private sales of lands at minimum price.

2185. SEC. 11. Whenever the state board shall have exposed for sale any lots of the lands of this state pursuant to law, and any of such lots shall remain unsold, the commissioners may in their discretion issue certificates for the sale thereof to such persons respectively as shall thereafter make application for any of the said lots at not less than the minimum price affixed to them.

Reduction of minimum price.

2186. SEC. 12. Whenever any lot of land shall have been put up for sale by the state board, and no bids shall have been received for the same, and no application be made for the purchase thereof within a reasonable time, the state

board of land commissioners may, if in their opinion the minimum price was fixed too high, reduce the same, and again advertise and proceed with the sale thereof, *provided*, that no such reduction shall exceed ten per centum in any one fiscal year.

Sales of lands upon which improvements are made; deduction of appraised value of improvements.

2187. SEC. 13. Any person desiring to purchase lands upon which he or she shall have made improvements prior to August first, A. D. 1876, if the land was surveyed at that time, or if unsurveyed, then prior to the survey, shall be allowed to deduct the appraised value of the improvements from the amount bid for said lands and improvements, and in the event that any person purchase land upon which such improvements have been made, the purchaser shall pay the full price of said land and improvements to the state treasurer, and the state treasurer shall pay the appraised value of the improvements to the person owning the same, and the price of said improvements shall be paid in full at the time of sale, by the purchaser; *provided*, that the bid mentioned in this section, shall be for a sum equal to the amount of both the appraised value of such improvements and the minimum price of the land as fixed by the state board of land commissioners, but in case such bid does not equal the minimum price of land and appraised value of improvements, such deficit shall be taken from the appraised value of improvements. Said improvements shall be appraised as provided for the appraisement of improvements upon school lands in article 4, section 24, of this act.

Penalty for trespass on, or injury to, state lands; duties of county superintendents and proceedings before justices of the peace.

2188. SEC. 14. If any person shall commit trespass or other injury to the lands of the state, or upon any of the improvements thereon, the person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than twenty-five dollars and not exceeding one thousand dollars, and it shall be the special duty of the county school superintendent to take cognizance of all such offenses committed in his county, and report the same to the proper officer; all justices of the peace, upon information, oath, affirmation, or of their own knowledge, shall cause any person committing any of the offenses mentioned in this section to be brought before

them by like process as in criminal cases, and to enter into recognizance to appear at the next term of the district court of the district in which the offense was committed, and in default of such recognizance to commit such person to the jail of the county.

Cutting and destroying of timber, more than necessary for building, fencing or fuel; action for damages.

2189. SEC. 15. If any purchaser of lands before receiving his title in fee simple therefor, shall cut or destroy any timber upon said land more than may be necessary for the building and repair of fences and houses on the land, or for fuel for the family of the occupant, he or she shall be liable to pay the amount of damages done to the land, recovered by an action in the name of the people of the state of Colorado, to be instituted by the attorney general.

Disposition of fees, fines and forfeitures.

2190. SEC. 16. All moneys received from fees, fines and forfeitures under this act, shall be paid to the state treasurer, and by him placed to the credit of the fund to which the land in regard to said fees, fines and forfeitures belonged.

When state may purchase lands sold for purchase money due thereon.

2191. SEC. 17. Whenever the state board shall sell any lot of land for the purchase moneys due thereon, and the sum due for principal and interest shall not be bid therefor, they may purchase the same for the state at the amount so due with the costs of sale.

Lands not to be assessed for taxation at higher valuation than estimate upon which sold, for five years.

2192. SEC. 18. Any lands sold, for five years after such sale shall not be assessed by assessors of the town or county in which they shall lie, at any higher valuation than the estimate upon which they were sold, unless improvements within that time have been made thereon, in which case the value of such improvements shall be added to the estimate.

Disposition of funds arising from sale of state laws.

2193. SEC. 19. All moneys arising from the sale of state lands shall be paid to the state treasurer, and shall be invested by him for the benefit of the fund to which they may belong in the securities prescribed by this act.

Payment of expenses of sale.

2194. SEC. 20. The expenses of all sales of land shall be paid by the treasurer on warrants issued by the auditor, on vouchers certified by the state board that the said expenses were necessary and actually incurred.

1295. SEC. 21. The state board of land commissioners shall have the power to lease the school and university lands of the state at a rate not less than ten per cent. per

Leasing of school and university lands.

annum, payable in advance, on the appraised value of the same, and shall require of the lessee such a bond as shall secure the state from loss or waste, and in no case shall the lessee be allowed to cut or waste more timber than shall be necessary for the improvement on the land or for fuel for the use of the family of the lessee.

Sale of lands for location of colonies or construction of ditches.

2196. SEC. 22. The state board of land commissioners may sell in parcels of not more than five thousand acres, at public sale, at not less than its appraised value, any of the lands granted to the state for public improvements under the act approved September 4, 1841, conditioned upon the location of colonies thereon, or the construction of extensive lines of ditches covering such lands; *provided*, that not more than one-half of any one section of land shall be sold, and in alternate half sections; *and provided further*, that every alternate one-half section unsold shall not be sold for three years thereafter.

Sale of school lands.

2197. SEC. 23. All lands granted by congress of the United States for school purposes, known as sections sixteen and thirty-six, together with all such as has been granted and shall be selected in lieu of said sections, may be sold as hereinafter provided.

Appraisement of school lands; how to be made; compensation of appraisers.

2198. SEC. 24. Whenever ten householders of any organized school district in which the land is situated shall petition the state board to expose to sale any portion or portions of said lands, describing the same, the state board shall direct the county commissioners of the county in which such land is situated, to cause the same to be appraised by three disinterested householders, each legal subdivision of land being appraised separately at its real value, and return their appraisement in writing, signed by them, to the clerk of the county; and in case any parcel of the said lands shall have been improved, the said appraisers shall, in addition to the appraisement of the land, return and file with the said clerk a separate appraisement of the improvements upon the land. The appraisers shall receive four dollars per day for the time actually employed in such appraisement, to be paid by warrant of the auditor of state on the state treasury.

2199. SEC. 25. The county clerk shall immediately

file the said apportionment and appraisement of said appras- Filing and recording of appraisement.
ers in his office, and record the same in a book kept for that purpose, and transmit a certified copy of the same to the state board of land commissioners. All school lands known as sections sixteen and thirty-six shall be exposed In what manner school lands to be sold; disposition of proceeds.
to sale to the highest bidder, at the county seat in the county where such lands are situated. The board of land commissioners shall direct the county school superintendent to sell such lands, and give notice of such sale as provided in this act. All moneys arising from the sale of such school lands by the county superintendent shall be paid to the county treasurer, and by him immediately transmitted to the state treasurer, who shall invest the same as provided in section three, article one, of this act; and the payments for school lands shall be the same as provided in the sale of other state lands.

2200. SEC. 26. It shall be unlawful for the state board Purchase or leasing of state lands by persons in employ of state prohibited.
of land commissioners, county commissioners, county superintendent, or any persons appraising lands, or any person or persons in the employ of the state for the selection, appraisal, sale or leasing of the state or school lands, to purchase or lease directly or indirectly any portions of the lands of this state.

2201. SEC. 27. School lands known as sections sixteen Sales of school lands situated within or adjacent to city or town.
and thirty-six, or any part thereof, situated within or adjacent to any organized city or town, or any addition to a city or town, may be surveyed and laid off in blocks and lots, streets, alleys, avenues, highways, or public squares, to conform to the legal subdivisions of such city or town, and the state board of land commissioners shall cause correct maps and plats of such lands to be made and recorded; when so surveyed and platted, and not otherwise, the said board may, in its discretion, sell the same at public auction to the highest bidder; *provided*, that each block or lots as numbered and platted upon said maps shall be sold separately, and not until they shall have been appraised and notice of such sale given in the same manner as prescribed in sections twenty-four, twenty-five and twenty-six of article four of this act. Such sales shall be made upon the same

terms as provided in this act for the sale of other school lands.

Report of county superintendents of schools to state board of land commissioners of condition of school lands.

2202. SEC. 28. It shall be the duty of the county superintendent of schools in each county of the state to report to the state board of land commissioners, on or before the first day of July, A. D. 1877, the condition of the school lands located in their several counties, showing the amount thereof, whether any part of the same is occupied and by whom, whereupon it shall be the duty of the state board to ascertain the amount of such lands occupied and rightfully held under any law of the United States by occupants thereof, and to make a location of other lands equivalent thereto for the support of the public schools.

Selection of salt springs and lands adjacent thereto; compensation of employés and payment of necessary expenses.

2203. SEC. 29. In the selection of the twelve salt springs and the six sections of land adjacent thereto, granted to the state by the eleventh section of an act of congress, approved March 3, 1875, the governor shall have authority to employ such assistance as may be necessary in the selection and location of said lands; *provided*, that the persons so employed shall not receive for their services a higher rate of compensation than is allowed persons employed in the selection of other state lands. The governor shall be allowed his actual traveling and other necessary expenses while engaged in the selection and location of the salt springs and lands adjacent thereto.

Granting right of way over or upon lands purchased by or donated to the state.

2204. SEC. 30. In any case where land has heretofore or may hereafter be purchased by or donated to the state, or may have been purchased by or donated to the territory of Colorado, and the state remains the owner thereof, either for the erection of public buildings or for any other purpose, and it is deemed expedient to grant the right of way over or upon such lands, the governor and secretary of state shall be, and hereby are, authorized to execute and sign on behalf of the state a proper deed or other instrument of writing therefor, and should the owner or owners of land adjoining any such land, desire to lay out and subdivide any such lands so adjoining any of the land belonging to the state, into an addition to any city or town, the said governor and secretary of state may, and they are hereby authorized, to execute and acknowledge the proper

acquittance, or join in a plat of such addition, for the purpose of granting the right of way over and upon such lands, and the same shall be considered as a full and clear right of way over such land to all intents and purposes, the same as though the same was executed by any individual owner; *provided, however*, that this section shall not be deemed to grant authority to convey any such land except for the purposes above set forth, other than as provided in this act.

Emergency.

2205. SEC. 31. Inasmuch as it will soon be time to commence the work of the location of the public lands, and no provision has heretofore been made for the same, therefore, it is the opinion of this general assembly that an emergency exists, and that this act shall take effect without delay.

Approved, March 17, 1877.

CHAPTER LXXXIV.

PUBLIC LIBRARIES.

AN ACT CONCERNING LIBRARIES.

[Session Laws, 1872.]

Application of fines and penalties to establishment and support of public libraries.

2206. SECTION 1. The clear proceeds of all fines for any breach of any penal ordinance of any city in this state, and for penalties or upon any recognizance in criminal proceedings, may be exclusively applied to the establishment and support of public libraries as hereinafter provided.

Establishment of libraries by city ordinance.

2207. SEC. 2. Any city in this state may establish a public library under the provisions of this act, whenever the common council of such city shall by ordinance determine to establish the same.

Appointment of library committee.

2208. SEC. 3. Whenever the common council of any city in this state shall pass an ordinance to establish such public library, it shall be the duty of the mayor of such city to appoint three competent persons who shall constitute a library committee for the term of one year from the date of their appointment, and until their successors are duly appointed and qualified; and such appointment shall be confirmed by the common council of such city.

Duties of library committee.

2209. SEC. 4. It shall be the duty of such library committee to collect from the proper officers, all moneys hereinbefore provided to be appropriated for such library purposes, and to expend the same in such manner as they may deem most expedient for establishing and maintaining such library; to make all rules and regulations respecting the same; to appoint a librarian, who shall hold his office at the pleasure of the committee, and to fix the salary he shall receive, subject to the approval of the common council of such city; to have the general management and control of the library and funds appropriated for such library purposes, and it shall be the duty of such committee to make an annual report of their acts to the common council of such city, giving a detailed statement of all moneys received, with the sources from which they were derived. Also a detailed account of all moneys expended by them, and the purposes for which they were expended.

Bond to be given by members of library committee.

2210. SEC. 5. Each member of such library committee shall perform his duties without compensation, and shall, before entering upon his duties, give a bond to be approved by the mayor of such city, in the sum of five hundred dollars, conditioned for the faithful performance of his duties.

Power of committee to sue and be sued.

2211. SEC. 6. Such committee and their successors shall have power to sue and be sued, in the name of the library committee of the city in which they are appointed, in all matters relating to such library or library fund.

Any part of fund may be applied to aid of library associations. (Amendment 1876.)

2212. SEC. 7. That the common council or board of trustees of any city or town in this state, are hereby authorized, if they shall see fit, to apply any part of the fund referred to in section one, in aid of any library association organized for the benefit of the public, heretofore or hereafter established; *provided*, such library association will give to the common council or board of trustees such representation upon its board of management as may be required.

CHAPTER LXXXV.

PUBLIC PRINTING.

AN ACT TO PROVIDE FOR THE PUBLIC PRINTING AND PUBLISHING AND DISTRIBUTION OF THE LAWS OF THIS STATE.

Be it enacted by the General Assembly of the State of Colorado:

2213. SECTION 1. That the secretary of state shall, fifty days immediately preceeding each regular session of the general assembly, advertise for four weeks successively, in two newspapers, published in different sections of the state, one of which shall be at the seat of government, for sealed proposals for doing all printing required and authorized by the general assembly for its use, or for the state, in all the several departments thereof, for the two succeeding years.

Advertisement of sealed proposals for printing.

2214. SEC. 2. Said advertisement shall divide the printing required to be done under this act, into three classes:

Classification of printing in advertisement.

The first—To comprise all printing incident to the business of the two houses while in session.

The second class—To comprise such documents as may be ordered printed by the two houses, and all laws passed by the general assembly; and

The third class—The printing for the several state departments of all kinds and description whatsoever.

2215. SEC. 3. The advertisement shall require specifications in said bids as follows: for all classes except blanks, the price of composition per thousand (1000) ems; the price per token of press work; the price per quire of all paper used, specifying the size, weight and quality thereof; and the price of folding, stitching and binding the same in cheap cloth or pasteboard covers, and for the laws ordered printed by the first session, in law sheep; and for blanks, the price per quire, the contractor furnishing the paper and material for the same, and such other specifications as the secretary may deem best.

Specifications in advertisement.

2216. SEC. 4. The secretary of state shall keep in his office for inspection, a specimen of each kind, style and quality of the work required to be done, and material to be used in the several cases.

Specimens of kind, style, quality and material.

Delivery of bids.

2217. SEC. 5. The bids shall be delivered at the office of the secretary of state, indorsed "proposals for state printing," and shall be and remain sealed up until the hour specified in the advertisement for such letting, for opening the same; and no bid shall be received by said secretary after said hour.

Guaranty for execution of bond.

2218. SEC. 6. The secretary of state shall consider no bid which is not accompanied by a sufficient guaranty that the person making the same, will, if successful, execute the the necessary bond for the fulfillment of his contract.

Opening of bids; letting of contracts; bond to be given; amount and conditions.

2219. SEC. 7. At the hour specified for opening said bids, the secretary of state, in presence of the state treasurer, attorney general, and in the absence of either, in presence of the governor, and of such bidders as may choose to attend, shall open the same, and proceed to determine who is the lowest responsible bidder for each class thereof; and after due examination and the determination of the same, said secretary shall immediately notify said lowest bidder of his appointment to execute the work; who, thereupon, within ten days after receiving said notice, shall execute a bond to the people of the state in the sum of five thousand (5,000) dollars, conditioned for the faithful performance of the duties assigned him, which bond shall be approved by the governor, and deposited in the office of the secretary of state; and in case said lowest bidder shall fail to fulfill his contract and execute said bond, he and his guarantees shall be liable for all the additional costs which may accrue to the state by reason thereof; and the secretary of state shall, in case of such default, immediately award the contract to the bidder next lowest, who shall execute a bond in the sum aforesaid, within ten days after he is notified of said award. *Provided*, that the secretary of state may, if he shall deem it for the interest of the state, reject any or all bids. *Provided, further*, that nothing in this act shall authorize any person, association of persons, company or corporation, by virtue of the contract for printing the statutes or laws of this state, to either, directly or indirectly, print, publish or sell for his or their own use or benefit any of such laws, but the right to print, publish and sell such laws shall always remain in the state, and in case any of such laws shall be

Awarding of contract to next lowest bidder.

Printing, publishing or selling of state laws for personal use or benefit forbidden; penalty for violation.

printed, published or sold by any person, company or corporation, except by authority of the state, such books may be seized by the state as its property, and the person printing, publishing or selling the same, shall forfeit to the state the sum of one hundred (100) dollars for each and every book, volume or pamphlet of laws so printed, published or sold, to be recovered by an action in the nature of an action of debt in the name of the state, in any court of competent jurisdiction, and the provisions of this act shall apply to the laws of the present session as well as to the laws of subsequent ones; and the secretary of state is hereby authorized and instructed to take the necessary steps to secure the copyright to the state of printing and publishing its laws.

Copyrighting of laws.

2220. SEC. 8. The person to whom said award shall have been made, and who shall have given the required bond, shall execute the said printing comprised in the first class in section two (2) of this act, at the seat of government.

Certain printing to be done at seat of government.

2221. SEC. 9. It shall be the duty of the secretary of state to furnish the person or persons authorized to do the state printing, as soon as practicable after the adjournment of each session of the general assembly, with a copy of all the laws, except strictly private acts, passed at such session, properly arranged for publication, with a full index and marginal notes to the laws, as fast as such printer shall require the same, and shall see that the printing and binding of the laws are well executed. The signature of the president of the senate, speaker of the house, and governor, shall not be printed at the end of each law, but only at the end of the volume; and the date of the approval by the governor shall be affixed to each law; and the number of copies to be published shall be as follows, viz: Twenty-five hundred copies in the English language, three hundred copies in the Spanish language, and three hundred copies in the German language.

Preparation and furnishing of copy to printer, of laws of each session.

Number of copies to be published.

2222. SEC. 10. The laws, messages of the governor, and all reports required to be printed, shall be of uniform size so as to admit of being bound together in a compact form.

Uniformity of size of laws, messages and reports.

2223. SEC. 11. The laws of each session shall be bound

Binding.

in cheap cloth or pasteboard binding, in suitable form for preservation; and the name of each volume, and the year of its publication, shall be stamped on the back of the same in ink.

Manner of disposition of laws published.

2224. SEC. 12. The secretary of state shall dispose of the laws passed at each session of the general assembly, published in the English language, immediately after the publication of the same, as follows:

First—He shall deposit five copies thereof in the state library, to be preserved therein, and retain one copy for the use of his office.

Second—He shall distribute to the state and district officers one copy each, and send to the county clerk of each county, a sufficient number of copies to be distributed by him to each of the county officers, justices of the peace and town constables, allowing one for each; but no person who shall hold more than one office shall be entitled to more than one copy.

Third—He shall send to the governor of each state and territory of the United States, free of expense to the same, two copies, accompanied with a request of a similar communication to be made to the governor of this state, of the laws of the respective states and territories.

Receipts to be given by officers for laws received by them.

2225. SEC. 13. Every officer receiving a copy of the laws shall execute a receipt therefor, and shall have stamped or written thereon the name of the office held by him, and he shall, when he ceases to hold such office, deliver over to his successor all laws received by him as such officer, and upon failure to do so, shall be liable on his official bond or in his individual capacity.

Manner of distribution to county officers.

2226. SEC. 14. The county clerk of each county, within one month after the adjournment of the general assembly, shall forward to the secretary of state a statement of the number of officers and persons in his county entitled by law to a copy of the laws of the last preceding session of the general assembly; also, the names of the public officers, if any there be, who should be furnished with the laws published in the Spanish or German languages, and as soon as the same are ready for distribution, the secretary of state shall, at his office, deliver to such county clerk or to his order,

properly packed, the number of copies set forth in such statement, and take a receipt therefor; and all the expenses for transporting the laws to any county shall be paid out of the county treasury.

Number to be retained by secretary of state.

2227. SEC. 15. At least one hundred copies of the laws remaining after the distribution provided for by law, shall be safely kept by the secretary of state, for the use of new counties and the general assembly, as they shall become entitled to receive the same.

Sale of laws and distribution of proceeds.

2228. SEC. 16. The laws in the English language remaining after the distribution of the same according to law, shall be sold by the secretary of state at the original cost with twenty-five per cent. added, and the proceeds shall be paid to the state treasurer, taking his duplicate receipt therefor, one of which shall be transmitted to the auditor of state. The laws in the Spanish and German languages shall be sold at the same price per copy as the laws in the English language.

Account of sales at close of fiscal year.

2229. SEC. 17. The secretary of state shall, at the close of each fiscal year, report under oath, to the auditor of state, the number of copies of the laws remaining in his hands after the distribution as aforesaid, and the number of copies sold by him, and the amount paid into the state treasury, and the auditor of state shall charge him with the number of copies on hand, and credit him with the proceeds of all that are sold, as shown by the receipt from the state treasurer.

Delivery of laws remaining with secretary of state, to successor.

2230. SEC. 18. When the secretary of state goes out of office having any such copies remaining in his hands, he shall deliver them to his successor, taking his duplicate receipt therefor, one of which he shall transmit to the auditor of state, who shall thereupon give such secretary of state the proper credit, and charge his successor with the copies received by him.

Approved, February 20, 1877.

CHAPTER LXXXVI.

RAILROADS.

AN ACT CONCERNING RAILROAD CROSSINGS.

[Session Laws, 1874.]

Stoppage of trains at crossing of railroads.

2231. SECTION 1. In all cases where two railroads shall cross each other, every train on approaching such crossing shall come to a full stop immediately before it reaches such crossing, and shall cross such track at a speed not exceeding four miles per hour.

Penalty for violation of the foregoing section.

2232. SEC. 2. Any and every engineer, conductor or other person, having charge of and running any locomotive or train or any such railroad, who shall violate section one of this act shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not less than fifty nor more than two hundred dollars for each offense.

Crossing of track of railroad already constructed by another railroad Securing of right of way in case of disagreement.

2233. SEC. 3. Whenever any railroad company in this state shall have constructed its track, and it shall be necessary for any other company to cross the same with its track, it shall be lawful for such company to do so at any suitable place, so as not to obstruct such track already constructed, and if the parties cannot agree as to the right of way and damages for such crossing, the company desiring to cross may proceed to secure the right of way for such crossing only by condemnation in the same manner as provided other cases.

AN ACT CONCERNING RALROADS.

[Session Laws, 1874.]

Acquiring right of way for new line. Reversion of previous right of way to former owner, on payment of amount paid by railroad company.

2234. SECTION 1. That any railroad company, having located its line of road whether the same is completed or not, may make a new location of its line, and may acquire the right of way for such new line, in the same manner as is now provided for acquiring the right of way by the statutes of Colorado. *Provided*, that in acquiring said new right of way, the previous right of way shall revert to the owner or owners of the land through which said previous right

of way was granted, on the payment or tendering payment to the railroad company the amount assessed by the board of appraisers and paid by said railroad company for said previous right of way.

AN ACT TO PREVENT FIRES ON THE PRAIRIES.

[Session Laws, 1874.]

Fire guards; manner of construction.

2235. SECTION 1. That every railroad corporation operating its line of road or any part thereof within this state, shall between the fifteenth day of July and the first day of October of each and every year, upon each side of its line of road, plough as a fire guard a continuous strip of not less than six feet in width, which said strip of land shall run parallel with said line of railroad, and be ploughed in such good and workmanlike manner as to effectually destroy and cover up the vegetation thereon and be sufficient to prevent the spread of fires, and the outer line of said strip of ploughed land shall be upon the outer line of such corporation's right of way, or if upon land owned by said corporation, one hundred feet on either side from the centre of the road; *provided*, that such fire guard need not be constructed within the limits of any town or city, nor along the line of a railroad running through the mountains, or over other lands where ploughing would be impracticable.

Penalty for railroad company failing to construct fire-guards.

2236. SEC. 2. Any railroad company failing to comply with the provisions of section one of this act, shall be liable to pay a penalty of two hundred dollars for each and every mile or fractional part thereof, of such strip of land as it neglects to plough upon either side of the line of its road in this state, in each and every year as aforesaid, the same to be collected in an action of debt in any court of complaint [competent] jurisdiction, in the name of the people of the state of Colorado, and when collected it shall be paid into the school fund of the county wherein the cause of action accrued, and *provided* that the said action shall be brought within three years next after it accrues.

Liability of railroads for damages occasioned by fire.

2237. SEC. 3. That every railroad corporation operating its line of road or any part thereof within this state, shall be liable for all damages by fire that is set out or caused by operating any such line of road or any part thereof, and such damages may be recovered by the party damaged by the proper action in any court of competent jurisdiction; *provided*, the said action be brought by the party injured within three years next after the said damage shall have been inflicted or caused.

CHAPTER LXXXVII.

REVENUE.

AN ACT TO ENABLE COUNTY COMMISSIONERS TO CORRECT FALSE RETURNS AND STATEMENTS OF PROPERTY FOR TAXATION.

[Session Laws, 1876.]

Compulsory process in case of false or incorrect return of property for taxation.

2238. SECTION 1. When the county commissioners of any county have reason to believe that any person has given or has caused to be given to the assessor, a false or incorrect statement of his, her or their taxable property, or has refused or neglected to make the statement required by law, said county commissioners may, and are hereby empowered to issue compulsory process, and require the attendance of any person or persons whom they may suppose to have a knowledge of the value or amount of such taxable property, and examine such person or persons, on oath, in relation to such property.

Liability for costs and expenses by persons making false returns.

2239. SEC. 2. In all cases in which any person or persons shall make or cause to be made a false or incorrect statement of the amount or value of their taxable property, or neglect or refuse to make a statement, for the purpose of evading the payment of taxes in whole or in part, such person or persons shall be liable for and pay all costs and expenses that may be incurred under the provisions of this act. The same fees and costs shall be allowed and paid, as is now or may be allowed by law for similar services, and if not paid, may be collected before any justice of the peace

of the proper county, by suit in the name of the board of county commissioners. But in all cases under this act, when the statement shall be found correct, and no intention to evade the payment of taxes shown, the costs and expenses under this act, shall be paid out of the county treasury of the proper county, on the order of the county commissioners.

AN ACT TO PROVIDE FOR THE ASSESSMENT AND COLLECTION OF REVENUE AND TO REPEAL CERTAIN ACTS IN RELATION THERETO.

Be it enacted by the General Assembly of the State of Colorado:

2240. SECTION 1. That for the support of the government of the state, the payment of public debt and the advancement of public interest, taxes shall be levied as hereinafter provided. Object of levy.

2241. SEC. 2. A poll tax shall be assessed on every able-bodied male inhabitant of the state, over the age of twenty-one and under fifty years, whether a citizen of the United States or an alien. Poll tax.

DEFINITIONS.

2242. SEC. 3. Whenever the terms mentioned in this section are employed in this chapter they are employed in the sense hereinafter affixed to them.

First—The term real estate includes—first, all lands within the state to which title, or the right to title, has been acquired from the government of the United States; second, all mines, minerals and quarries in and under the land, and all right and privileges appertaining thereto; third, improvements. Definition of real estate.

Second—The term "improvements" includes—first, all buildings, structures, fixtures and fences erected upon or affixed to land, whether title has been acquired to said land or not. Denfinition of improvements.

Third—The term "personal property" includes everything which is the subject of ownership not included within the term real estate. Definition of personal property.

Fourth—The term "full cash value" means the amount at

Definition of full cash value.

which the property would be appraised if taken in payment of a just debt due from a solvent debtor.

Definition of credit

Fifth—The term "credit" includes every claim and demand for money, labor or other valuable thing, and every annuity or sum of money receivable at stated periods; but pensions from the United States, and salaries or payments expected for services to be rendered, are not included in the above term.

Property taxable.

2243. SEC. 4. All property, both real and personal, within the state, not expressly exempt by law, shall be subject to taxation. The increase in the value of private lands, caused by the planting of hedges, orchards and forests thereon, shall not be taken into account in assessing such lands for taxation, for the period of ten years from the first day of July, A. D. 1876.

Hedges, orchards and forests on private lands exempt from taxation until 1886.

Real and personal property exempt from taxation.

2244. SEC. 5. The following classes of property shall be exempt from taxation, to wit: first, mines and mining claims bearing gold, silver and other precious metals (except the net proceeds and surface improvements thereof,) for the period of ten years from the first day of July, A. D. 1876; second, ditches, canals and flumes owned and used by individuals or corporations for irrigating lands, owned by such individuals or corporations or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purpose; third the property, real and personal, of the state, counties, cities, towns, and other municipal corporations and public libraries; fourth, lots with the buildings thereon, if said buildings are used solely and exclusively for religious worship, for schools, or for strictly charitable purposes; also, cemeteries not used or held for private or corporate profit.

Taxes which shall be levied.

2245. SEC. 6. There shall be levied and assessed upon taxable, real and personal property within this state in each year the following taxes: For state revenue, three mills on a dollar, except as provided in section forty-four of this act,

Rate of tax for state revenue.

when no other rate is directed by the state board of equali-

Rate for interest and payment on county bonds.

zation; for interest and payments on county bonds, such rate as may be necessary to pay said interest and payments;

Rate for county revenue.

for ordinary county revenue, including the support of the

Rate for schools.

poor, not more than ten mills on the dollar; for the support

of schools, not less than two, nor more than five mills on the dollar; for road purposes, not more than five mills on the dollar, and a poll tax not to exceed one dollar for such purposes, as shall be determined by the county commissioners of each county.

Rate for road purposes.

Poll tax.

2246. SEC. 7. Every inhabitant of this state, of full age and sound mind, shall list all property subject to taxation in this state, of which he is the owner, or has the control or management, in the manner hereinafter directed; but the property of a ward shall be listed by his guardian; of a minor, having no guardian, by his father, if living, if not, then by his mother, if living, and if not, then by the person having the property in charge; of a married woman by her husband, but if he be unable, neglects or refuses, by herself; of a beneficiary for whom property is held in trust, by the trustee. The property of every deceased person shall be listed by the executor or administrator. The property of persons or corporations whose assets are in the hands of receivers, shall be listed by such receivers; of a body corporate, company, society or partnership, by its principal accounting officer, agent or partner; property under mortagage or lease, shall be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagee or lessee.

Duty of persons liable to taxation.

Property of a ward, by whom listed.

Of a married woman.

Of a benificiary.

Of a deceased person.

Property in hands of receivers, listed by same.

Property of corporations, companies and societies, by whom listed.

Mortgaged property, by whom listed and to whom taxed.

2247. SEC. 8. Commission merchants and all persons trading and dealing on commission, and consignees authorized to sell when the owner of the goods does not reside in the county in which such commission merchants, persons or consignees are doing business, are, for the purpose of taxation, to be deemed the owners of the property in their possession.

Commission merchants and consignees considered owners.

2248. SEC. 9. All personal property shall be listed in the county where it shall be on the first day of May of the then current year; but if the owner resides out of the state, or fails to return his property to the assessor, it shall be listed and taxed where it may then be. *Provided*, that horses, mules, cattle and sheep running at large and not being worked, shall in all cases be returned and assessed in the county in which they are being herded or kept on the first day of May in each year.

Personal property to be listed in county where found May 1st.

If owner fails to return property to assessor, it shall be listed and taxed where found.

Stock running at large, where assessed.

Stock driven into a county to graze previous to December 31, assessable in such county, with certain exceptions.

2249. SEC. 10. When any stock is driven into a county for the purpose of grazing therein, at any time previous to the last day of December in any year, it shall be liable to be assessed for all taxes leviable in that county for that year, the same as if it had been in the county at the time of the annual assessment; and it shall be lawful for the proper officers to assess and collect the same at any time after the usual time of assessment and collection. *Provided*, that such stock has not been regularly assessed in some some other county of the state for that year, and it shall be the duty of the county assessor, when required by the person having such stock in charge, to give a certificate of assessment, stating the number, kind and value of stock assessed, and such certificate shall be sufficient evidence of a legal assessment of such stock for that year; *and, provided, further*, that if any assessor shall fraudulently give to any person such certificate, or any person shall in any manner illegally obtain such certificate, he shall, on conviction, be fined in any court of the state having competent jurisdiction, in any sum not exceeding one thousand dollars, or imprisonment in the county jail not exceeding six months, or both, at the discretion of the court. All fines resulting from the provisions of this section shall be for the use and benefit of the county in which the assessment should be properly made.

Assessor shall give certificate of assessment when required.

What assessor's certificate shall state.

Certificate shall be evidence of assessment.

Penalty for fraudulently assessing or illegally obtaining certificate.

Fines recovered shall be for the use of the county

Assessor shall assess all personal property in his county on May 1st.

2250. SEC. 11. Every assessor shall assess all personal property situate or being in his county on the first day of May in each year. Any person required to list property in behalf of another, shall do so in the same county in which he would be required to list it if it were his own; but he must list it separately from his own, naming the person or estate to whom it belongs; but the undivided property of a person deceased, belonging to his heirs, may be listed as belonging to such heirs without enumerating them.

How persons shall list property belonging to others.

Property of companies constructing ditches, etc., how assessed.

2251. SEC. 12. The property of corporations or companies constructing canals, ditches, flumes, plank roads, gravel roads, turnpike roads and similar improvements, shall be assessed to the company or corporation in the respective counties in which said improvement shall be situated, and

Railroad property, how assessed.

railroad property shall be assessed as follows: On the first Monday in April in each year the state board of equalization shall meet at the executive office, and they shall meet from day to day thereafter until the business of said board, as hereinafter provided, shall be accomplished. The duties of said board shall be to assess all the property in this state belonging to railway corporations, except lots or parcels of real estate owned by the road within each county, and improvements thereon, and except depots, machine shops, and other improved property connected with such road and located in any county which shall be taxed in the county where situate. The president, vice-president, general superintendent, auditor, or other general officer of any corporation operating any railway in this state, shall furnish said board on or before the fifteenth day of March in each year a statement, signed and sworn to by one of such officers, showing in detail for the year ending on the thirty-first day of December preceding: first, the whole number of miles owned, operated or leased in the state by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind, and the value located in each county in the state; second, also a detailed statement of the number and value thereof of engines, passenger, mail, express, baggage, freight and other cars, or property owned by such railway, and on railways which are a part of lines extending beyond the limits of this state; the return shall show the actual proportion of the amount and full cash value of the rolling stock in use on the corporation's line which is necessary for the transportation of the freight and passengers, and the operation of the railroad in this state during the year for which the return is made. The return shall also show the amount and value of property hereinafter designated in this section, and such further information shall be furnished as the board may in writing require. If said officers fail to make such statement, said board shall proceed to assess the property of the corporation so failing, and shall add thirty per cent. to the value thereof as ascertained and determined by the said board. The said property shall be valued at its full cash value, and assessments shall be made

Time and place of meeting of state board of equalization.

Duty of board of equalization.

President or other officers of railway companies shall furnish statement.

Statement shall be sworn to.

What the statement shall contain.

Such information shall be furnished as board may require.

In case of failure of officers to make statement, board shall assess, and add 30 per cent.

Property shall be assessed at full cash value.

What assessment shall include.

upon the entire railway within this state, and shall include the right of way, road bed, bridges, culverts, rolling stock, depots, station grounds, buildings and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, said board shall take into consideration all matters connected with said road necessary to enable them to make a just and equitable assessment of said railway property. On or

Board shall transmit statement to county clerk.

before the fifteenth day of April in each year, said board shall transmit to the county clerk of each county, through which any railway may run, a statement showing the

What statement shall show.

length of the main track of such railway within the county and the assessed value per mile of the same as fixed by a pro-rata distribution per mile of the assessed value of the

Statement shall be entered on record of county

whole property herein specified; said statement shall be entered on the proper record of the county. At the first

County commissioners shall make and have recorded an order.

meeting of the board of county commissioners held after said statement is received by the county clerk, they shall make, and cause the same to be entered in the proper

What the order shall state.

record, an order, stating and declaring the length of the main track and the assessed value of such railway lying in each municipal corporation within their county through which said railway runs, as fixed by the above named board, which shall constitute the taxable value of said property for taxable purposes; and the county clerk shall

County clerk shall transmit copy of order to city council.

transmit a copy of said order to the city council or trustees of such municipal corporation. All such railway property

Railway property shall be taxed by same officers and for same purposes as individual property.

shall be taxable upon said assessment by the same officers and for the same purposes as the property of individuals within such counties and municipal corporations.

Insurance companies.

2252. SEC. 13. All insurance companies of every description, whether existing in this or other states and territories, and operating in this, shall be taxed as other persons or corporations upon the amount of premiums taken by them during the year previous to the listing in the county where the agent conducts that business; and the agent shall render the list and shall be personally liable for

If agent refuses, assessor may assess.

the tax, and if he refuses to render the list or to swear to the same, the amount may be assessed according to the best knowledge and discretion of the assessor.

All property shall be valued annually.

2253. SEC. 14. All taxable property shall be listed and valued each year, and shall be assessed at its full cash value.

Credits

What deductions may be made from credits.

2254. SEC. 15. In making up the amount of credits which any person is required to list, he will be entitled to deduct from their [the] gross amount, the amount of all *bona fide* debts owing by him; but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the intent of this section; and no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of an unpaid subscription to any institution or society, nor on account of a subscription to or installment payable on the capital stock of any company or incorporation; and no liability of any person or persons, as surety for another shall be deducted; and no deduction shall be made in any case unless the party claiming such deduction, shall disclose to the assessor under oath, the name or names of the person or persons to whom such party is indebted, and the amount of such indebtedness to each, and also that such indebtedness is not barred by the statute of limitations.

Persons having control or possession of money or credits of another shall list the same.

2255. SEC. 16. Any person acting as the agent of another, or having in his possession or under his control or management, any money, notes or credits, or personal property belonging to such other person, shall be required to list the same at their full cash value; and if he refuses or neglects to render the list, or to swear to the same, the amount of such money, property, notes or credits, shall be listed and valued according to the best judgment of the assessor. There shall be levied and assessed by the state, county and municipal authorities in this state, upon all bank stock, or stock in any monied corporation of loan or discount, on each share thereof, owned by any individual, body corporate, corporation or society, a sum equal to, but not greater in proportion to the value thereof than is levied and assessed upon other monied capital or personal property in the hands of or owned by individuals in this state.

If agent refuses, assessor shall list the same.

Bank stock, how assessed.

2256. SEC. 17. All shares of the banking associations

Shares of banking associations organized under act of congress shall be included with personal property.

organized within this state, pursuant to the provisions of the acts of congress to procure a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate, in the assessment of taxes in the county where such banking associations are located, and not elsewhere, whether the holder thereof resides there or not; and it shall be lawful for the state, county, town and municipal authorities, to levy and assess upon such stock or each share thereof, owned by any such individual, body corporate, corporation or society, a sum equal to, but not greater according to the value thereof, than is levied and assessed upon other monied capital or personal property in the hands of individual citizens in this state; *provided*, that the tax so imposed under this act upon the value of shares of said national bank, does not exceed the rate imposed upon the value of shares in any of the banks or banking associations organized under the authority of the late territory of Colorado; *provided, also*, that nothing in this act shall exempt the real estate of such banking association from either state, county or municipal taxes, to the same extent according to its value as other real estate is taxed.

Bank stock not to be assessed at a higher rate than money of individuals.

President or other officer shall list shares of association.

What the list shall contain.

Banks liable for their shareholders.

2257. SEC. 18. The president, cashier or principal accounting officer of each of said associations, between the first and twentieth days of May of each year, shall list the shares of the association, giving the assessor the name of each person owning shares, and the amount owned by each, and for the purpose of securing the collection of taxes assessed upon said shares, each banking association shall be liable to pay the same as the agent of each of its shareholders, under the provisions of section seventeen of this act; and the association shall retain so much of any dividend belonging to any shareholders, as shall be necessary to pay any taxes levied upon his shares; and if neither the said president, cashier or accounting officer shall comply with the provisions of this section, the association shall be liable to pay the tax upon all the said shares, [and] the same shall be assessed against such association by the assessor.

Assessor shall take cognizance of amendments to acts of congress regarding banks.

2258. SEC. 19. If at any time congress shall amend the acts aforesaid, then each assessor shall assess the shares in any such national bank in such manner as to conform to such amended act of congress.

When owner of property is unknown, assessor may assess without giving name.

2259. SEC. 20. When the name of the owner of any real estate is unknown by reason of the failure of the owner to list the same, and the assessor finds it impracticable to obtain the same, it shall be proper and lawful to assess such real estate without connecting therewith any name, but inscribing at the head of the page the words, "owners unknown;" and such property, whether lands or town lots, shall be listed as near as practicable in the order of the numbers thereof; and in assessing such real property no one description shall comprise more than one town lot, or more than one-sixteenth part of a section, or other smaller subdivision of the land according to the government surveys, except in cases where the boundaries are so irregular that it cannot be described in the usual manner, in accordance with such surveys or town lots.

How unknown property shall be listed.

Assessor shall leave notice and blank form with each person.

2260. SEC. 21. The assessor of each county is directed on or before the first day of May of each year, to leave with each person resident in his county, of full age and sound mind, at the usual place of residence, or at the office or other place of business of such person, a written or printed notice requiring him to make out and return to the assessor at a time and place therein specified, a statement or list of his property, which by law is subject to taxation, and to leave a blank form upon which said list may be made; but if the person is prepared to render his list at the time the notice is left, it shall be the duty of the assessor to receive it at that time.

Duty of assessor to receive list at time of leaving notice, if person is ready to render it.

Duty of property owners to furnish list by May 20th.

2261. SEC. 22. It shall be the duty of every person owning or having charge of property in this state subject to taxation, to make out and deliver to the assessor on or before the twentieth day of May, in each year, a correct list of the same as required by law, whether he shall receive from the assessor a notice to do so or not; and every assessment made against property subject to taxation shall be valid in all respects, whether such notice was received or not; and no failure of the owner to have such property

Failure of owner to have property assessed, shall not invalidate assessment.

No irregularity, error or omission in assessment shall affect legality of tax, or title to property.

assessed, or to have the errors in the assessment corrected, and no irregularity, error or omissions in the assessment of any property, or in the levying of any tax, shall effect [affect] in any manner the legality of any taxes levied thereon, nor effect [affect] any right or title to such real property, which would have accrued to any party claiming or holding the same under and by virtue of a deed executed by the treasurer as provided for by this act, had the assessment of such property been in all respects regular.

What the list shall contain.

2262. SEC. 23. This list shall contain—first, his lands by section or part of section, township and range, and where such part of section is not a legal subdivision, some other description sufficient to identify it, and his town lots, naming the town in which they are situated, and their proper description by number of lot and block or otherwise, according to the system of numbering in the town; second, his personal property, or property for which he is agent, by the following particulars: Average value of merchandise for the year ending May 1st; amount of capital employed in manufactures; number and value of horses; number and value of mules; number and value of asses; number and value of cattle; number and value of sheep; number and value of swine; number and value of goats; number and value of other animals; number and value of carriages and other vehicles of every description; amount of money and credits; number and value of clocks and watches; value of jewelry, gold and silver plate; number and value of musical instruments; value of household furniture; value and number of shares of bank stock; value of stock or shares in any other corporation or companies; value of all other property not enumerated, and number of polls. In listing the average amount of merchandise, the person so listing shall take the average value of such property, in his possession or control during the year next previous to the time of listing, and if he has not been engaged in the business of merchandising so long, then he shall take the average during such time as he may have been so engaged; and if he be commencing, he shall take the value of the property on hand at the time of listing. Any person who purchases, receives or holds personal

Manner of listing merchandise

property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, purifying, or by the combination of different materials with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer for the purposes of this act, and he shall list for taxation the average value of such property in his hands, estimated as merchants are directed by this section; but the value shall be estimated upon the materials only entering into the combination or manufacture.

List may be varied by county commissioners.

2263. SEC. 24. The above list of items may be varied or enlarged by the county commissioners, so as to obtain such additional facts as they may deem advisable.

Commissioners shall furnish blanks.

2264. SEC. 25. Before the first day of April in each year, the county commissioners of each county shall cause to be furnished to the assessor, suitable blank forms for assessment, and such instructions as shall be necessary to secure full and uniform assessments and returns.

List shall be sworn to.

2265. SEC. 26. The list shall be signed and sworn to by the person making it, and the oath may be administered either by the assessor, who is hereby authorized to administer the same, or by any other officer authorized to administer oaths, and shall be duly certified, and the oath may be printed upon the blank forms, and shall be in substance as follows:

Form of oath.

I, ——— ———, do solemnly swear (or affirm) that according to the best of my knowledge and belief, the above list contains a full and correct statement of all property subject to taxation, which I or any firm of which I am a member, or any corporation, association or company of which I am president, cashier, secretary or managing agent, own, possess or control, and which is not already assessed.

Neglect or refusal to render list.

2266. SEC. 27. If any person who is known to the assessor to be liable to give in a list, and pay taxes agreeably to the provisions of this act, shall neglect or refuse to give in his list, made and sworn to as hereinbefore prescribed, on or before the twentieth day of May in each year,

the assessor shall fill out a list for such person, putting therein all taxable property which he has reason to believe is owned by said person, liable to taxation, at its present full cash value.

Wilfull concealment or misrepresentation.

2267. SEC. 28. Any property wilfully concealed, removed, transferred or misrepresented by the owner or agent thereof, to evade taxation, upon discovery shall be assessed by the assessor at its true cash value, and the owner thereof shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than five nor more than one hundred dollars; and the assessor or treasurer shall examine under oath, any person or persons who [whom] he has reason to believe possesses [possess] any knowledge of such wilfull concealment, removal, transferment, or misrepresentation.

Penalty.

Assessor shall not receive list until perfected.

2268. SEC. 29. If any assessor shall receive and accept of the list of any person not made, sworn or affirmed to and perfected, in the manner hereinbefore prescribed, he shall for each list so received and accepted by him contrary to this act, forfeit the sum of twenty-five dollars, to be deducted from his compensation by the county commissioners, or be collected by suit brought upon his official bond.

Penalty.

Persons having no property.

2269. SEC. 30. If any person with whom the assessor shall have left a notice, requiring him to make out a list of property for taxation, shall have no property which by this act he is required to list, either in his own account or on behalf of others, he shall set forth such fact on the blanks left with him by the assessor, or otherwise, and shall make oath or affirmation to the truth thereof, and return the same to the assessor on or before the twentieth day of May; and every person owning or having charge of property subject to taxation, and required by this act to list the same, who shall fail, neglect or refuse to do so, as herein required, or who shall return a list known to be erroneous or defective, either as to the description of real estate, number, value or amount of personal property, or who shall wilfully make or fail to make in such list any statement whatever, whereby he shall avoid any assessment of taxes proper to be made against him, shall be subject to a penalty of not less than

Shall make oath.

Neglect or refusal to list.

one hundred nor more than one thousand dollars, to be recovered by the county commissioners for the use of the county, in any court of competent jurisdiction; and it shall be the duty of any assessor or treasurer having knowledge of a violation of the provisions of this section, to report the same to the district attorney.

Penalty.

Assessor shall report to district attorney.

2270. SEC. 31. The said statements returned to the assessor shall be endorsed with the name of the person whose property is therein listed, when known, and the assessor shall file them in alphabetical order, and return them to the county clerk's office when he returns his assessment roll to be preserved.

Statements, how indorsed.

Filed and returned to county clerk.

2271. SEC. 32. All property shall be valued by the assessor, except such as is required to be valued by the owner in section 23 (twenty-three) of this act.

Property valued by assessor.

2272. SEC. 33. On or before the twenty-fifth day of June, annually, the assessor shall make out and deliver to the county clerk an assessment book or roll containing in tabular form and alphabetical order, the names of the persons and bodies in whose names property has been listed in his county, with the several species of property and the value as hereinbefore indicated, with the columns of numbers and values footed, and in a column to be provided for that purpose, he shall write the words "by the assessor" when the list was made by himself; and all real estate not returned to the assessor as above provided, and the owner of which is unknown to the assessor, shall be entered and described at the end of said assessment book, under the head of "unknown," as provided in this act.

Assessor to deliver assessment roll to county clerk.

Form of assessment roll.

2273. SEC. 34. If by any means any property, real or personal, shall be omitted in the assessment of any year or series of years, and not put upon the assessor's book, the same when discovered shall be assessed by the assessor for the time being, and placed upon his book before the same is returned to the county clerk, with all the arrearages of taxes which should have been assessed and paid in former years, charged thereon, or in case of the failure or neglect of the assessor, the same shall be assessed by the treasurer as provided for "additional assessments."

Omissions.

How assessed.

2274. SEC. 35. At the time of returning the assessment

Assessor and clerk shall compare assessment roll and correct errors.

book to the county clerk as provided in this act, the assessor and clerk shall carefully compare the various items therein with each other, and with township, town and city plats or maps, where they have been provided, and all errors and omissions found therein shall be promptly corrected.

Each tract land and lot assessed separately.

2275. SEC. 36. Each tract of land, and each town or city lot, shall be valued and assessed separately, except when one or more adjoining tracts or lots are returned by the same person, in which case they may be valued and assessed jointly.

Assessor's oath.

2276. SEC. 37. The assessor must take and subscribe an oath, to be certified by the officer administering it, and attached to the assessment book, to be substantially as follows:

"I, ——— ———, assessor of ——— county, do swear that through the whole time allotted by law to make this assessment, I have made diligent enquiry and examination to ascertain all the property within the county subject to taxation, and that I have assessed it on the assessment book equally and uniformly, according to the best of my judgment, information and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws, and that I have not imposed any unjust assessment through malice or ill will, nor allowed any one to escape a just and equal assessment through favor or reward."

Failure to take oath shall not invalidate assessment.

But the failure to take or subscribe such an oath, or any oath, will not in any manner effect the validity of the assessment.

County commissioners shall constitute board of equalization.

2277. SEC. 38. The county commissioners of each county in this state, shall constitute a board of equalization for the correction and completion of the assessment rolls for their respective counties.

Meetings of board.

Said board shall hold two regular meetings in each year, at the office of the county clerk, at the county seat, as follows, viz: Commencing on the first Monday in July, and continuing not less than three nor more than ten consecutive days; and on the third Mon-

day of July, and continuing not less than one nor more than three consecutive days. Said board shall, at its first meeting, have power to supply omissions in the assessment roll, and for the purpose of equalizing the same, may increase, diminish, or otherwise alter and correct any assessment or valuation. In case any material changes are made by said board in the assessment of any person or persons at said first meeting, the county clerk shall at the close of said meeting notify said person or persons by letter or otherwise that such change has been made. Said board shall at its second meeting sit to hear complaints from those aggrieved by said changes, or otherwise, and shall have power to so adjust said assessment roll as in their judgment is proper and right.

Duties of board.

County clerk shall give notice of changes in assessment.

2278. SEC. 39. The county clerk shall give at least ten days' notice, by publication, or by posting written or printed notices of the time and place of meeting of the county board of equalization.

Shall give notice of time and place of meeting of board.

2279. SEC. 40. Immediately after the assessment roll is completed, the county clerk shall make out an abstract thereof containing the whole number of acres of land listed in the county, and the valuation thereof; the whole number of miles of railroad in the county, and the value thereof; the total valuation of town lots; the whole number of horses, and their total value; the whole number of mules, and their total value; the whole number of asses, and their total value; the whole number of cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the whole number of musical instruments, and their total value; the total value of clocks, watches, jewelry, gold and silver plate; the gross amount of all other property, with money and credits, which abstract the clerk shall make out in duplicate, and transmit one copy forthwith to the auditor of the state; but the state board of equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned as it may deem advisable.

Shall make abstract of property listed in the county.

Number and value of all kinds property liable to taxation.

Clerk to transmit abstract to auditor of state.

Board may diminish or add to list.

2280. SEC. 41. If any county clerk shall refuse or neglect to prepare an abstract of the assessment roll of his

Refusal of clerk to make abstract

Penalty.

Certificate of auditor prima facie evidence.

county, and forward the same to the state auditor, as required in the preceding section, he shall forfeit to the state the sum of five hundred dollars, to be recovered in the name of the state of Colorado by civil action, and the certificate of the auditor authenticated by the seal of his office, setting forth the failure of the clerk to comply with the provisions of said section, shall be *prima facia* evidence on the trial of such action.

State board equalization.

Time and place of meeting.

2281. SEC. 42. The state board of equalization shall consist of the governor, secretary, auditor, treasurer of the state and the attorney general. They shall sit at the office of [the] secretary of the state, at the capital, on the second Monday of August of each year, and are hereby authorized and required to examine the various assessments, as far as regards the state tax, and equalize the rate of assessment in the various counties, whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

Shall equalize rate of assessment.

Board may add or diminish valuation.

2282. SEC. 43. Said board shall ascertain whether the valuation of real estate in each county bears a fair relation or proportion to the valuation in all other counties of the state, and on such examination they may increase or diminish the aggregate valuation of real estate in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of real estate in the state; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the clerks of the several counties.

Auditor shall transmit statement to county clerk.

Rate of tax.

2283. SEC. 44. On or before the first day of September in each year, the auditor shall transmit to the clerk of each county a statement of the changes, if any, which have been made in the assessment, and the rate of state tax which is to be levied and collected within his county, which, however, shall not exceed three mills on a dollar of the valuation; and when the board fixes no different rate, or if for any reason the board fail to sit, or the county clerk should fail to receive the statement of the rate of tax ordered by them, that rate shall be deemed to be levied; and the clerk of each county, in making up the tax list required by this act, shall compute and carry out in the

proper column a state tax at the rate aforesaid; *provided, however*, that for the year 1877 the rate of taxation shall be for state [purposes] five mills on the dollar, unless the state board of equalization shall fix a different rate. Any clerk failing herein may be fined in any sum not less than five hundred nor more than three thousand dollars, to be recovered by action of debt in the name of the people of the state of Colorado, in any court of competent jurisdiction.

Rate for 1877.

Failure of clerk to comply with law.

Penalty.

2284. SEC. 45. On the first Monday in October in each year the board of county commissioners shall, by an order to be entered of record among their proceedings, levy the requisite taxes for the year for school and other county purposes as required by law, and the same may be levied at any time prior to the first Monday of October. If the statement required by section 44 (forty-four) has been received from the auditor, and if for any cause the said commissioners shall not be able to levy said taxes on or before the first Monday in October in any year, they may make such levy at any time.

Commissioners to levy tax for county purposes, when.

2285. SEC. 46. As soon as practicable after the taxes are levied, the clerk shall make out a tax list in a book provided by the county for that purpose, and in alphabetical order, having columns for names of owners; description and value of real estate; value of personal property; amount of each different kind of tax; total amount of taxes; delinquent taxes and remarks. Said list may be in the following form:

Clerk shall make tax list.

ABSTRACT OF ASSESSMENT ROLL, ———— COUNTY, COLORADO, 18—.

Names.	Value of personalty.	Lands. Description.	Section.	Town.	Range.	Value of land and improvements.	City and Town Property. Lots.	Block.	Division, Addition, or Town.	Value of lots and improvements.	Total valuation.	County Tax.	State Tax.	School Tax.	Deaf Mute Tax.	* See foot note.	Special School Tax. No. of district.	Valuation.	Amount of Tax.	Total Tax.	Remarks.
									EXAMPLE.												
Smith, A. B.		N. E. ¼ of N. E ¼.	8	5	66	$ 200	1 to 6,	1	Littleton.	$300							1	$500	$5 00		
		S. E. ¼.	3	4	67	600	10,	4	E. Denver	100							17	100	1 00		
		W. ½ of S. W. [¼]	1	10	68	1,000	1, 2, 3,	8	W Denver	600							21	50	50		
	$500	N. E. of N. E. of S. E.	10	3	68	100	all	1	Berger's.	900	$43 00	$38 70	$6 45	$12 90	$ 86		24	250	2 50	$67 91	
Totals.																					

2286. SEC. 47. An entry shall be made upon the tax list, showing what it is and for what county and year it is, and the county clerk shall attach to the list his warrant, under his hand and official seal, in general terms, requiring the treasurer to collect the taxes therein levied, according to law; and no informality in complying with the above requirements, shall render any proceedings for the collection of taxes illegal. The clerk shall cause the list to be delivered to the treasurer of the county by the first day of November, or as soon thereafter as practicable, and shall take his receipt therefor; and such list shall be full and sufficient authority for the treasurer to collect all taxes contained therein.

Attachments to list by clerk.

Informality shall not render collection illegal.

Clerk shall transmit list to treasurer by 1st of Nov.

2287. SEC. 48. The treasurer on receiving the tax list and warrant, shall proceed to collect the tax therein levied, and the list and warrants shall be his authority and justification against any illegality in the proceedings prior to receiving the list.

Treasurer's duty and authority.

2288. SEC. 49. If at any time after the assessment thereof, the owner or other person shall remove or cause to be removed from the county in which the assessment was made, without paying the taxes thereon, any horses, cattle, mules, asses, sheep, goats or other property, it shall be the duty of the county treasurer of the county in which such assessment was made, to send to the clerk of the county to which such animals or property shall have been removed, and where they shall then be, a copy of said assessment as found upon his books, whereupon the said clerk shall deliver the same to the treasurer of his county, charging him therewith, and the said treasurer shall proceed forthwith to collect said taxes, with five per cent. penalty for collecting, and if not paid upon demand, may proceed by distraint as provided in this act, and after deducting from the taxes so collected his per centage, the remainder shall be paid over to the treasurer of the county in which the assessment was made.

Removal of property without paying taxes.

Treasurer shall send copy of assessment of property removed to clerk of county where property may be.

Treasurer shall collect with five per cent. penalty.

2289. SEC. 50. County warrants are receivable at the treasury of the proper county for the ordinary county tax, penalty and cost, and any poor tax or poor house tax; but money only is receivable for the school and state taxes.

County warrants for taxes.

Cash for school and state tax.

Road warrants for road tax.

Road warrants may be received for the payment of road taxes, as provided in the chapter relating to roads.

Road warrants received by treasurer.

2290. SEC. 51. When a county or a road warrant is received by the treasurer, he shall endorse on it the amount for which it was received, and the date thereof; and from that date the warrant shall be regarded as cancelled, and cannot be reissued; but when the warrant amounts to more than is to be paid by the person presenting it, the treasurer is authorized to make change with the person paying tax, by giving him the required amount in the same kind of funds or warrants.

Errors in tax list.

2291. SEC. 52. If on the assessment roll, or on the tax list, there be any error in the name of a person taxed, the name may be changed and the tax collected from the person intended, if he be taxable and can be identified by the treasurer or assessor.

No demand of taxes necessary.

2292. SEC. 53. No personal demand of taxes shall be necessary; but it is the duty of every person subject to taxation to attend at the office of the treasurer, between the first day of November and the thirtieth day of December of each year, and pay his taxes; and if any person shall neglect or fail to pay such tax, until after the thirtieth day of December following the levy of the same, the treasurer may make the same by distress and sale of any of his personal property.

Neglect to pay before 30th of January.

Distress and sale.

Proceedings in distraint.

2293. SEC. 54. When the treasurer distrains goods, he may keep them at the expense of the owner, and shall give notice of the time of their sale within five days after the day of the taking, in the manner constables are required to give notice of the sale of personal property on execution and the time of the sale shall not be more than ten days from the day of the taking; but he may adjourn the sale from time to time for a period not exceeding ten days, and shall adjourn when there are no bidders; and in case of an adjournment, he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges for keeping and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges.

May adjourn sale.

Surplus over taxes returned to owner.

2294. SEC. 55. Whenever taxes shall be collected b

the seizure or sale of goods and chattels in addition to the amount of tax, the treasurer shall levy the necessary cost of the proceedings, and ten per centum on amount of tax for his trouble.

On sale by distraint, treasurer to levy cost of proceedings and ten per cent. for collection.

2295. SEC. 56. If the treasurer has reason to believe that any person charged with taxes upon personal property is about to remove such property from the county, or to sell, transfer, assign, convey, or conceal, or otherwise dispose of the same, or to cause the same to be done, such treasurer may at any time after such taxes are due, proceed to collect the same, with costs and charges, by distress and sale of any personal property of such person in the manner provided in this act.

Treasurer may collect by distress and sale when he has reason to believe property is to be removed, sold, etc.

2296. SEC. 57. The president, treasurer, cashier, secretary, or chief clerk of any corporation, the shares of which are taxable by law, at the request of the county treasurer shall give him a certificate under his hand, showing the number and amount of shares held in the stock of such corporation, the names of the holders and the incumbrances thereon, so far as to him known; and such treasurer, in default of payment by the corporation of the taxes due thereon as required by law, shall distrain, seize and sell the same, and the purchaser thereof shall be admitted to all the rights, powers and privileges that the holders of such shares had at the time of seizing the same, and shall be entered by such corporation on their books as the owner of such shares.

President of corporation shall give treasurer certificate.

What certificate shall contain.

Failure of corporation to pay taxes, treasurer shall seize and sell.

2297. SEC. 58. If any corporation, or any officer thereof, shall fail to comply with the provisions of the preceding section, such corporation shall forfeit to the state the sum of one thousand dollars, to be recovered by civil action in the name of the state, in any court of competent jurisdiction.

Forfeiture of corporation failing to give certificate and pay tax.

2298. SEC. 59. If the treasurer be resisted or impeded in the execution of his office, he may require any suitable person or persons to aid him therein; and if any person shall refuse such aid, he shall forfeit a sum not exceeding fifty dollars, to be recovered by civil action; and the person resisting shall be liable as in the case of resisting the sheriff in the execution of civil process.

Resistance to treasurer in discharge of duties.

Refusal to assist.

Taxes become delinquent 1st of January.

2299. SEC. 60. On the first day of January the unpaid taxes of the preceeding year become delinquent, and shall draw interest at the rate of twenty-five per cent. per annum; but the treasurer shall continue to receive payments of the same, with interest, after the first day of January until the day of sale for taxes.

Treasurer may continue to receive payment of after January 1st.

All property upon which tax is unpaid January 1st, subject to sale.

2300. SEC. 61. All lands and lots, and all the buildings, fixtures and improvements on public lands, and all the interest or title which any person or persons owning or claiming such improvements may have in the land upon which the same are made, on which the taxes shall not have been paid before the first day of January of each year, shall be subject to sale as hereinafter provided for the sale of lands for taxes.

Treasurer to make list of property subject to sale, with description thereof.

2301. SEC. 62. The county treasurer shall before the twentieth day of April in each year, make out a list of all lands and town lots subject to sale, describing such lands and town lots as the same are described on the tax roll,

Notice of sale.

with an accompanying notice stating that so much of each tract of land or town lot described in said list, as may be necessary for that purpose, will, on a day specified thereafter, and the next succeeding days, be sold by him at public auction at the county treasurer's office, for the taxes and charges thereon, and taxes and charges assessed against the owner thereof for personal property; *provided, however,*

Failure to make list by 20th of April not to invalidate sale.

that if such list should not be made until after the twentieth day of April, the sale held thereunder shall not be void by reason thereof. Such notice may be in the following form:

TREASURER'S OFFICE,
COUNTY of————,
STATE OF COLORADO.

Public notice is hereby given, that I will, according to law, offer at public sale, at the office of the treasurer of the

Form of notice.

county of———, and state of Colorado, on the———day of———, 18—, and succeeding days, commencing at the hour of——o'clock, A. M. of said day, so much of the following described real estate, situate in said county, on which the taxes for the year (or years) 18—, have not been paid, as shall be necessary to pay said taxes, interest and penalties, to wit:

LIST OF REAL ESTATE TO BE OFFERED.

Name of owner if known.	Part of section or lot.	Section or block.	Township, Town or City.	Range, Division or Addition.	No. of acres.	Valuation.		Amount of Tax.	
						$	c.	$	c.

Witness my hand and seal, this —— day of——, A. D., 18—

C—— D—— (Seal)

County Treasurer.

Description of property to be sold.

Treasurer to give notice of sale by publication or otherwise.

2302. SEC. 63. The treasurer shall give notice of the sale of real property by the publication thereof once a week for not less than four weeks, in a newspaper in his county, if there be one, the first of which publication shall be at least four weeks before the day of sale; and by a written or printed notice, posted in a conspicuous place, on or near the outer door of the office or building commonly used as the office of the treasurer, for not less than four weeks before the sale; and if there be no newspaper published in the county, the like notice shall be given by posting one written notice, the above length of time, in each election precinct in which any land to be sold is situate, and one on or near the door of the treasurer's office as above provided.

Printer to give treasurer affidavit of publication of list and notice.

2303. SEC. 64. Every printer who shall publish such list and notice shall immediately after the last publication thereof, transmit to the treasurer of the the proper county, an affidavit of such publication, made by such person to whom the fact of publication shall be known; and no printer shall be paid for such publication who shall fail to transmit such affidavit within fourteen days after the last publication. Such affidavit may be substantially in the following form, to wit:

Printer not to be paid who fails to give affidavit.

Form of affidavit.

I, A—— B——, publisher (or printer) of the ——, a —— newspaper, printed and published in the county of ——, and state of Colorado, do hereby certify that the foregoing notice and list were published in said newspaper, once in each week, for —— successive weeks, the last of which publication was made prior to the —— day of ——, A. D. ——, and that copies of each number of said paper, in which said notice and list were published, were delivered by carriers or transmitted by mail to each of the subscribers of said paper, according to the accustomed mode of business in this office.

A—— B——,
Publisher (or printer) of the ——.

STATE OF COLORADO, }
—— COUNTY, } ss.

Form of acknowledgment to affidavit.

The above certificate of publication was subscribed and sworn to before me by the above named A—— B——,

who is personally known to me to be the identical person described in the above certificate, on the —— day of———, A. D. 18—.

{ Seal. }

C——— D———,
———————.

2304. SEC. 65. The county treasurer shall also make, or cause to be made, an affidavit of the posting of such list and notice as above required, all of which affidavits shall be deposited by him with the county clerk, to be there carefully preserved.

Treasurer's affidavit.

Affidavit deposited with clerk.

2305. SEC. 66. A penalty of ten per centum upon the amount of all taxes due upon lands advertised, shall be added by the treasurer immediately after advertising real estate for sale, and shall be collected by him in all cases; and such penalty so collected shall be credited to the general fund of the county by the treasurer.

Ten per cent. penalty upon land advertised.

Penalty credited to general fund.

2306. SEC. 67. The board of county commissioners, at their first meeting in July, shall allow the amount agreed upon, or if no agreement has been made, shall make a reasonable allowance to the publisher for printing the delinquent tax list.

Commissioners to allow printer publishing tax list.

2307. SEC. 68. On or before the first Monday in June in each year, the treasurer is directed to offer at public sale, at his (the treasurer's) office, in his county, all lands on which the taxes levied the preceding year, or any preceding year, still remain unpaid; but such sale shall not be void if not made until after the day named.

Time of sale.

Sale not void on account of date of sale.

2308. SEC. 69. On the day designated in the notice of sale, the county treasurer shall commence the sale of those lands and town lots on which the taxes and charges have not been paid, and shall continue the same from day to day, Sundays excepted, until each parcel shall be sold, or so much of each parcel as shall be sufficient to pay the taxes and charges thereon, including all costs and penalties. If there shall be no bid for any tract offered, the treasurer shall pass it over for the time, and shall re-offer it at the beginning of the sale next day until all the tracts are sold, or until the treasurer shall become satisfied no more sales can be effected.

Sale to be continued.

Funds receivable for lands sold for taxes.

2309. SEC. 70. When the treasurer sells any lands or lots for delinquent taxes, he shall receive the same kind of funds in payment therefor as he is required to receive in payment of taxes.

No sale invalid on account of an error in name of owner.

2310. SEC. 71. When any lands or town lots are offered for sale for any taxes, it shall not be necessary to sell the same as the property of any person or persons; and no sale of any land or town lot for taxes shall be considered invalid, on account of its having been charged on the roll in any other name than that of the rightful owner, or charged as unknown; but such land must be in other respects sufficiently described on the tax roll to identify it, and the taxes for which it is sold be due and unpaid at the time of such sale.

If sale cannot be made by first Monday in June, may be made on first Monday of succeeding month.

2311. SEC. 72. If from neglect of officers to make returns, or from any other good cause real property cannot be duly advertised and offered for sale on or before the first Monday of June, it shall be the duty of the treasurer to make the sale on the first Monday of the next succeeding month in which it can be made, allowing time for the publication of notice as provided in this act.

Figures and abbreviations may be used in advertisements, etc.

2312. SEC. 73. In all advertisements for the sale of real property for taxes, and in entries required to be made by the assessor, county clerk, treasurer or other officer, in lists, books, rolls, certificates, receipts, deeds or notices, letters, figures and abbreviations may be used to denote townships, ranges, sections, parts of sections, lots, blocks, dates and amounts of taxes, interest, penalties and costs.

Treasurer shall make record of all real estate sold for taxes.

2313. SEC. 74. The county treasurer shall make a correct record of all sales of real estate for taxes, in a well bound book to be kept by him for that purpose. Said book shall contain:

What record shall contain.

First—The date of sale.

Second—The name of the owner or owners thereof, if known.

Third—The description of each tract of land or town lot sold.

Fourth—The name of the purchaser.

Fifth—The total amount of taxes, interest, penalties and costs at time of sale.

Sixth—Columns for amount of subsequent taxes paid by the purchaser, and the date of payment.

Seventh—To whom assigned and the date of assignment.

Eighth—Name of persons redeeming and date of redemption.

Ninth—Total amount paid for redemption.

Tenth—Name of persons to whom conveyed and date of deed.

He shall also note in the tax list, opposite the description of the property sold, the fact and date of such sale, and shall immediately after such sale and completion of such record, make and certify a true copy thereof, in a well bound book to be provided for that purpose, which shall be deposited with the county clerk of the county; and such book or books so certified, shall be known as the record of tax sales of the county, and shall be in all respects a part of the records of the county clerk's office, as fully as if they had been made by the clerk; and for such service the treasurer shall receive such reasonable compensation as may be allowed by the board of county commissioners, to be paid out of the county treasury.

Treasurer shall make and certify a copy of record and deposit with clerk.

Record shall be a part of record of county clerk's office.

Treasurer's compensation.

2314. SEC. 75. The person who offers to pay the amount due on any parcel of lands for the smallest portion of the same, shall be considered the highest bidder; and when such portion constitutes a half or more of the parcel, or when it cannot be taken in a square form as hereinafter provided, it shall be taken from the east side thereof, dividing it by a line running north and south; if the portion be less than one-half of the tract, it shall be taken from the southeast corner, in a square form if it can be so taken, except that town lots and blocks are to be divided in every case lengthwise, by a line at right angles with the proper front of the lots or block; and the part sold shall be taken from the most northerly or most easterly side of said lots or blocks, as the case may be; but when more than one adjoining lots are offered as the property of the same person, one or more may be sold for the taxes on all.

Highest bidder.

When but a portion of land sold, how divided.

Lots, how divided.

2315. SEC. 76. Should any person bidding, fail to pay the amount due, the treasurer may again offer the land for sale if the sale has not closed; and if it has closed, he may

If bidder fails to pay amount due, treasurer may sell again.

again advertise it specially in the same manner as the original advertisement, and for not less than one week, when he may again offer and sell such lands or lots as provided in the foregoing section; or the treasurer may at his option recover the amount bid, by civil action brought in the name of the county in any court of competent jurisdiction.

Treasurer may sue bidder.

2316. SEC. 77. Omissions, errors or defects in form in any assessment list or tax roll, when it can be ascertained therefrom what was intended, may be supplied or corrected by the assessor at any time before the return of the assessment roll to the treasurer, or by the treasurer at any time after the receipt of the said roll by him. When any omission, error or defect has been carried into a delinquent list, or any error appears in any publication, the list or publication may be amended by the treasurer, and republished as amended; or notice of the correction may be given in a supplementary publication; but such publication must be made in the same manner as the original publication and for not less than one week.

Errors in list or tax roll may be corrected, when and by whom.

Delinquent list may be amended

2317. SEC. 78. The county treasurer shall make out, sign and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase describing the property on which the taxes and costs were paid by the purchaser, as the same was described in the record of sales; and also stating how much and what part of each tract or lot was sold, and the total amount of all taxes, interest and costs on each tract or lot for which the same, or a portion thereof, was sold as described in the record of sales, and that payment has been made thereof, with columns for subsequent taxes. If any purchaser shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate. For each certificate so delivered, the purchaser shall pay a fee of fifty cents to the county treasurer, and five cents additional for each tract of land therein described. Such certificate may be in the following form:

Certificate of purchase.

What certificate shall state.

Two or more purchases included in one certificate.

Fee.

TREASURER'S OFFICE,
COUNTY OF ———,
STATE OF COLORADO.

I hereby certify, that at a sale of real estate, situate in the county of ———, state of Colorado, for delinquent taxes for the year 18—, at the county treasurer's office, in the county aforesaid, on the ——— day of ———, 18—, in accordance with law, ——— was the purchaser of that part of the tract (or tracts) hereinafter described as having been sold, for which he paid the respective sum or sums of money set opposite said (or each) tract, being the amount of taxes on the whole of said estate, to wit: Form.

Form of certificate of purchase.

[TREASURER'S CERTIFICATE OF PURCHASE.]

NAME OF OWNER, when known.	Description of property taxed.			Description of part sold.				Amount of taxes paid.		Am't of subsequent taxes paid.		Date of Payment.	Am't of subsequent taxes paid.		Date of payment.	Am't of subsequent taxes paid.		Date of payment
	Part of section or lot.	Section or block.	Township, Town or City.	Range, div. or add'n.	No. of Acres.	Description.	No. of acres.	$	c.	$	c.		$	c.		$	c.	

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this —— day of ————, A. D., 18—.

C———— D————, [SEAL.]
County Treasurer.

2318. SEC. 79. Such certificate of purchase shall be assignable by endorsement, and an assignment thereof, when entered upon the record of sales in the office of the county clerk and county treasurer, shall vest in the assignee or his legal representative all the right and title of the original purchaser. Certificate assignable.

2319. SEC. 80. Any person desiring to pay any subsequent taxes on any lands or town lots for which he holds the tax certificates, shall produce such certificates to the treasurer, who shall endorse thereon the amount of such subsequent taxes and the date of payment thereof, in the book of tax sales, opposite such lands and town lots, and and the treasurer shall be entitled to receive as his fee therefor ten cents for each tract of land therein described. He shall also present such certificate to the county clerk, who shall enter the amount of such tax in the proper column in the record of tax sales in his office, and the clerk shall be entitled to receive as his fee therefor five cents for each tract of land therein described. Taxes subsequent to sale. Treasurer's endorsement. Fee. Clerk shall enter amount in record. Fee.

2320. SEC. 81. Real property, sold under the provisions of this act, may be redeemed by the owner, his agent, assignee or attorney, at any time before the expiration of three years from the date of sale, and at any time before the execution of the deed to the purchaser, his heirs or assigns, by the payment to the treasurer of the proper county to be held by him subject to the order of the purchaser of the amount for which the same was sold, with interest thereon at the rate of twenty-five per cent. per annum from the date of sale, and fifteen per cent. on the sum if redeemed within three months from the date of the sale thereof, and twenty-five per cent. if redeemed after three months and within one year from the date of sale, and forty per cent. if redeemed after one year and within two years from the date of sale; and fifty per cent if redeemed after two (2) years and within three (3) years, together with the amount of all taxes accruing on such real estate after the first sale, paid by the purchaser and endorsed on his certificate of purchase, with interest on the same at the rate of twenty-five per cent. per annum on such taxes paid subsequent to such sale; but if said subsequent taxes Redemption of real property. Time and rate of interest.

should be paid before the time when unpaid taxes levie for that year would become delinquent, interest shall onl be computed from the time of their delinquency.

Property of minors and lunatics, how redeemed.

2321. SEC. 82. The lands of minors or any intere they may have in any lands sold for taxes, may be r deemed at any time before such minor becomes of ag and during one year thereafter; and the lands of idio and insane persons so sold, or any interest they may hav in the same, may be redeemed at any time within one ye after such disability shall be removed, in the manner pr vided in this act.

Treasurer to issue certificate of redemption.

2322. SEC. 83. The county treasurer shall upon appl cation of any party to redeem any real property sold und the provisions of this act, and being satisfied that such par has a right to redeem the same, and upon the payment of th proper amount, issue to such party a certificate of redem tion, describing the tract redeemed as in the certificate sale, and giving the date of redemption, the amount pa and by whom redeemed, and he shall make the prop entries in the book of sales in his office.

Property of two or more persons in severalty.

2323. SEC. 84. In case any tract of land sold und the provisions of this act, shall belong to two or more se arate and distinct parties in severalty, the county treasur shall when satisfied of the fact, and upon application of an one of the parties or their agent or attorney, and upon th payment of the proper proportional amount, issue to suc party a certificate of redemption for such parties intere in said land, as provided in section eighty-three of this ac

Treasurer may include two or more tracts in one certificate.

2324. SEC. 85. If any person shall be entitled to r deem more than one tract or lot sold at the same sale, th treasurer shall include, at the request of the purchaser, th whole in one certificate. For each certificate so delivere

Fee.

the treasurer shall be entitled to a fee of fifty cents, an five cents additional for each tract of land therein describe Said certificate may be in the following form, to wit:

REDEMPTION CERTIFICATE, No. ——

TREASURER'S OFFICE,
COUNTY OF ————,
STATE OF COLORADO.

I hereby certify, that the real estate hereinafter described, situate in the county of ————, and state of Colorado, which was sold for delinquent taxes, for the year 18—, on the ———— day of ————, 18—, has this day been redeemed by ——— ———, by the payment to me of the (respective) sum (or sums) of money set opposite said (or each) tract, being the amount due thereon as provided by law, to wit: Form of redemption certificate.

Description of Lands Redeemed.					Amount Paid.	
Part of Section or lot.	Section or Block.	Township, Town or City.	Range, Division or Addition.	No. of Acres.	$	c.

Description.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this —— day of ——— A. D., 18—.

C—— D——, {Seal.}

County Treasurer.

Certificate to be endorsed by county clerk and entered upon record.

2325. SEC. 86. The person so redeeming any tract or tracts of land shall present his certificate of redemption to the county clerk, who shall enter the redemption in the proper columns in the record of land sold for taxes, and shall endorse the date of such entry on the certificate; and such certificate and the record thereof shall be *prima facie* evidence of the redemption of the lands therein described.

Clerk's fee for placing certificate upon record.

2326. SEC. 87. County clerks shall be entitled to a fee of fifty cents for each certificate of redemption entered upon their respective records, as provided in the preceding section, and the additional sum of five cents for each tract of land or lot therein described, to be paid by the person making such redemption.

Treasurer to pay redemption money.

2327. SEC. 88. The treasurer shall, on demand of any person entitled to redemption money in his hands, pay the same to such person on his surrendering to him the tax certificate to such land or lot as has been redeemed. If only a portion of the land or lots described in the tax certificate shall have been redeemed, the treasurer shall endorse on such certificate the portion redeemed, and the amount of money paid to such person, and shall take a receipt therefor.

To endorse amount paid, when but portion of land redeemed.

Loss or wrongful detention of certificate.

2328. SEC. 89. If there shall be a loss or wrongful detention of such certificate, and the land therein described shall have been redeemed, the owner thereof may exhibit to the treasurer evidence of such loss or detention, and upon his making the same satisfactorily to appear to the treasurer, and upon his executing a bond with sufficient surety that such person will refund such redemption money with twenty-five per cent. per annum interest thereon, if any person shall thereafter show his right thereto, such treasurer shall pay such redemption money to the person so executing such bond.

Redemption of lands of minors, idiots and insane.

2329. SEC. 90. In order to make redemption of lands of minors, idiots or insane persons, after the execution of the tax deed, such minor, idiot or insane person, or some person in his behalf, shall pay to the county treasurer the sum for which such lands were sold, and the cost of the tax deed and the recording of the same, with twenty-five per cent. on the same, with interest thereon from the date of such sale at the rate of twenty-five per cent. per annum, and

all other taxes, costs and charges which shall remain unpaid on such lands at the time of making such redemption, assessed thereon subsequent to the date of the assessment of the taxes for which the same was sold, and all other taxes assessed subsequent to the date last aforesaid, which shall have been paid by the person to whom said lands were sold, or by any other person claiming under him, with interest thereon at the rate of twenty-five per cent. per annum from the date of such payments, so far as such payments can be ascertained from the books and records in the office of such treasurer; and for all the moneys so paid the treasurer shall give a certificate of redemption to the person making such payments. From the time of making the redemption hereinbefore provided, the deed given upon the sale shall be void as against such minor, idiot, or insane person, and all persons claiming under him.

Quit claim deed to be given by purchaser to person redeeming.

2330. SEC. 91. All moneys received by the county treasurer for the redemption of lands under the provisions of the preceding section, shall be paid over to the person to whom such land was sold, or those claiming under him, on his delivering to such treasurer for the use of the person redeeming the same, a quit-claim deed of all the title to such land acquired under the sale duly executed and acknowledged.

Treasurer to give deed to purchaser after expiration of three years.

2331. SEC. 92. At any time of [after] expiration of the term of three years from the date of the sale of any lands for taxes, under the provisions of this act, on demand of the purchaser, his heirs or assigns, and on presentation of the certificate of purchase, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser, his heirs or assigns. The treasurer shall be entitled to one dollar for each deed made and acknowledged by him, and an additional fee of twenty-five cents for the acknowledgment thereof, to be paid by the purchaser. Whenever any certificate given by the treasurer for lands sold for taxes shall be lost or wrongfully withheld from the owner, and such lands shall have not been redeemed, the board of county commissioners may receive evidence of such loss or wrongful detention, and on satisfactory proof of the fact,

Fee.

Loss or detention of certificate.

Commissioners to cause deed to be executed.

may cause a deed as aforesaid to be executed to such person as may appear to them the rightful owner of the land described in such certificate.

2332. SEC. 93. Deeds executed by the treasurer shall be substantially in the following form:

Form of deed

Know all men by these presents, that, whereas, the following described real property, viz: (description of property taxed) situated in the county of———and state of Colorado, was subject to taxation for the year (or years) A. D.,——.

And whereas, the taxes assessed upon said real property for the year (or years) aforesaid, remained due and unpaid at the date of the sale hereinafter named;

And whereas, the treasurer of the said county did, on the —— day of——, A. D., —— by virtue of the authority vested in him by law, at (an adjourned sale) the sale begun and publicly held on the —— day of——, A. D., 18——, expose to public sale at the office of the treasurer, in the county aforesaid in substantial conformity with the requisitions [requirements] of the statute in such case made and provided, the real property above described for the payment of the taxes, interest and costs then due and remaining unpaid on said property;

And whereas, at the time and place aforesaid, A——— B——— of the county of——— and ——— of ——— having offered to pay the sum of——— dollars and —— cents, being the whole amount of taxes, interest and costs then due and remaining unpaid on said property, for (here follows the description of the property sold) which was the least quantity bid for, and payment of said sum having been made by him to the said treasurer, the said property was stricken off to him at that price;

And whereas, the said A——— B———, did on the ——— day of——— A. D., 18——, duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest to said property, to E—— F——, of the county of—— and —— of——;

And whereas, the said A——— B—— (or E—— F——) has paid subsequent taxes on said property to the amount of—— dollars and—— cents;

And whereas, more than three years have elapsed since the date of said sale, and the said property has not been redeemed therefrom as provided for by law;

Now therefore, I, C——— D———, treasurer of the county aforesaid, for and in consideration of the said sum to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these premises do grant, bargain and sell unto the said A—— B—— (or E—— F——,) his heirs and assigns, the real property last hereinbefore described, to have and to hold unto him the said A——— B——, (or E—— F——) his heirs and assigns forever, subject however to all the rights of redemption by minors, insane persons or idiots, provided by law.

{ SEAL } *In witness whereof*, I, C—— D——, treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto set my hand and seal, this——— day of—— A. D., 18—.

C——— D———

Treasurer.

STATE OF COLORADO, }
COUNTY [OF]———. } ss.

I hereby certify, that before me ——— ———, in and for said county, personally appeared the above named C—— D——, treasurer of said county, personally known to me to be the treasurer of said county, at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to [the foregoing deed,] and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purposes therein expressed. Form of acknowledgment.

{ SEAL. } Given under my hand and seal, this —— day of ———, A. D., 18—.

——— ———.

2333. SEC. 94. The deed shall be signed by the treasurer in his official capacity, and attested by his official or private seal, and acknowledged by him before some officer authorized to take acknowledgments of deeds, and Deed, how signed, sealed and acknowledged.

when substantially thus executed and recorded in the proper record of titles to real estate, shall vest in the purchaser all the right title, interest and estate of the former owner in and to the land conveyed, and also all the right, title, interest and claim of the state and county thereto, and shall be *prima facie* evidence in all courts of this state, in all controversies and suits in relation to the rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts:

Shall vest title in purchase.

To be prima facie evidence of certain facts.

First—That the real property conveyed was subject to taxation for the year or years stated in the deed.

Second—That the taxes were not paid at any time before the sale.

Third—That the real property conveyed had not been redeemed from the sale at the date of the deed.

Fourth—That the property had been listed and assessed at the time and in the manner required by law.

Fifth—That the taxes were levied according to law.

Sixth—That the property was advertised for sale in the manner and for the length of time required by law.

Seventh—That the property was sold for taxes as stated in the deed.

Eighth—That the grantee named in the deed was the purchaser or the heir at law, or the assignee of such purchaser.

Ninth—That the sale was conducted in the manner required by law.

Name of grantee to be entered in record.

2334. SEC. 95. When any tax deed is filed for record, the county clerk shall also enter the name of the grantee in the proper column of his record of land sold for taxes.

Limitation.

2335. SEC. 96. No action for the recovery of land sold for taxes shall lie, unless the same be brought within five years after the sale thereof for taxes as aforesaid, any law to the contrary notwithstanding; *provided, always*, that where [when] the owner or owners of such land sold as aforesaid, shall at the time of such sale be minor or minors, or insane or an idiot, and residing within the United States, one year after such disability is removed, it shall be lawful for such person or persons, their heirs or legal representatives, to bring their suit or action for the recovery of the

Minors, idiots or insane persons may recover, when.

lands so sold, and where [when] the recovery is effected, in all cases the value of the improvements made on the lands so sold and all taxes paid after the sale thereof, with interest thereon as provided by this act, shall be ascertained by the jury trying the action for recovery, and paid by the person or persons recovering the same, before he, she or they shall obtain possession of the land so recovered.

Taxes a perpetual lien upon real estate until paid.

2336. SEC. 97. All taxes shall be levied for the fiscal year ending November thirty (30) [thirtieth] in each year, and shall be a perpetual lien upon all real estate subject to taxation, until such taxes and any penalty, charges and interest which have accrued thereon, shall be paid; and any property, real or personal, which has by mistake or oversight been omitted from the tax list for any year or years, shall be subject to assessment for all back taxes properly chargeable thereon.

Upon personal property.

2337. SEC. 98. All taxes levied or assessed upon personal property of any kind whatsoever, shall be and remain a perpetual lien upon the property so levied upon, until the whole amount of such tax is paid; and if such tax shall not be paid on or before the first day of January next succeeding such levy, it is hereby made the duty of the county treasurer to collect the same by distress and sale of any of the personal property so taxed, or of any other personal property of the person assessed; and if such property so taxed or any part thereof shall have been removed from the county wherein the same was taxed, or is so conditioned that the treasurer cannot find or obtain the same, then the county treasurer shall sue the person so taxed, in an action of debt before any court of his county having jurisdiction; and upon the trial of any such cause, the tax roll or a certificate from the county treasurer of the amount of such tax, and that the same is not paid, shall be *prima facie* evidence that the amount claimed is due and unpaid, and may obtain a judgment for the amount of such tax, together with all costs, interest and charges thereon, and may have execution therefor against any of the property, real or personal, of such person; *provided, however*, that nothing in this section shall be so construed as to prevent the treasurer from distraint and sale of such property, as provided in section fifty-

Treasurer to collect by distress and sale.

Certificate of treasurer prima facie evidence of amount due.

six of this act, nor to operate as a change or repeal of section ten of this act.

Expenses of collection.

2338. SEC. 99. No expense incurred in the collection of taxes shall be paid by the state.

Mortgaged property.

2339. SEC. 100. In cases where lands are mortgaged, if the mortgagor fails or neglects to pay the taxes, or in case said mortgagor permits any land so mortgaged to be sold for any taxes, the mortgagee may pay said taxes or redeem any land so sold for taxes; and on the payment of any such mortgage, or in the action to enforce the same, such mortgagee may demand the taxes so paid, with interest thereon at twenty-five per cent. per annum, or include the same in any judgment rendered on the mortgage; and any taxes so paid by the mortgagee shall be a lien on such land so mortgaged, until the same shall be paid.

Executors and administrators.

2340. SEC. 101. Every person being seized or having the care of lands as executor or administrator, having funds in his hands applicable to such purposes, and who shall neglect or refuse either to list or pay the taxes on the same, shall be liable in an action to the devisee or devisees of the person whose executor he is, for any damage occasioned by such neglect.

Agents and attorneys.

2341. SEC. 102. Every person having the care of lands as an agent or an attorney, such agent or attorney having funds of the principal in his hands, neglecting or refusing either to list or pay the taxes on such land, shall be liable in an action to his principal for any damage such principal may have sustained by such neglect or refusal.

Guardians.

2342. SEC. 103. Every person holding lands as guardian, and neglecting or refusing to list or pay the taxes on the same in manner aforesaid, shall be liable in an action to his or her ward or wards, for any damage such ward or wards may have sustained by such neglect or refusal.

Grantors and grantees.

2343. SEC. 104. As between grantor and grantee of any land where there is no express agreement as to which shall pay the taxes that may be assessed thereon, if such land is conveyed between the first day of January and the first day of May, then the grantee shall pay the same; but if conveyed between the first day of May and the first day of January, the grantor shall pay them.

Lands subject to taxation.

2344. SEC. 105. Lands entered by pre-emption, final homestead, at public or private sale or otherwise, shall be subject to taxation whether the patent for the same shall have been issued or not; and when such entry shall be made before the first day of May in any year, the land so entered shall be subject to taxation for that year.

Wrongful assessments and sales.

2345. SEC. 106. When by mistake or wrongful act of the treasurer, clerk or assessor, or from double asssessment land has been sold on which no tax was due at the time, the county shall hold the purchaser harmless by paying him the amount of principal, and interest at the rate of twenty-five per cent. per annum; and the treasurer, clerk or assessor, as the case may be, and his sureties on his official bond, shall be liable to the county for all losses sustained by the county from sales made through the [their] mistake or misconduct.

Tax paid and found erroneous or illegal, to be refunded.

2346. SEC. 107. In all cases where any person shall pay any tax, interest or costs or any portion thereof, that shall thereafter be found to be erroneous or illegal, whether the same be owing to erroneous or improper assessment, to improper or irregular levying of the tax, to clerical or other errors or irregularities, the board of county commissioners shall refund the same without abatement or discount to the tax payer.

Auditor to give counties credit.

2347. SEC. 108. The auditor of state shall allow to each county, the amount of state tax that may have been from time refunded to the tax payer, as double or erroneous assessments, or refunded to the purchaser of real estate erroneously sold.

Double or erroneous assessments.

2348. SEC. 109. It shall be the duty of the treasurer of the [each] county before making sale of any lots or lands for unpaid taxes, as provided in this act, to carefully examine and compare the delinquent list with the abstract of assessment roll and block books in his office, and to omit from such sale all lots and lands doubly or erroneously assessed, so far as he is able to ascertain the same, and to make an itemized report to the board of county commissioners of his county, showing such double or erroneous assessment; and the board of county commissioners on receipt of such itemized report, shall by reso-

Treasurer shall report same to commissioners.

Commissioners shall abate.

lution to be entered in their proceedings, abate the taxes levied upon such double or erroneous assessments; and the board of county commissioners shall allow the treasurer for making such itemized report, such compensation as would be equal to the fees for collecting the taxes levied on such double or erroneous assessments, if collected in money by him.

Treasurers compensation for itemized report.

Settlements of county treasurers with county commissioners.

2349. SEC. 110. It shall be the duty of the treasurer of each county to make a settlement semi-annually with the board of county commissioners, at their first meeting in January and July; and the county clerk shall, immediately after such settlements are made, make out a statement upon blanks, to be provided by the auditor for that purpose, showing the exact condition of the state revenue in his county; the balance due the state, and of all credits due the county by reason of double or erroneous assessments; and amounts refunded to purchasers of real estate erroneously sold. Said statement shall be authenticated by the county seal, the signature of the county clerk and the majority of the board of county commissioners, and shall be made out in duplicate, one of which the county clerk shall preserve in his office, the other he shall immediately transmit to the auditor.

Clerk shall make statement of.

How authenticated and preserved.

Payments of state revenue.

2350. SEC. 111. Every county treasurer shall each year, unless otherwise directed by the auditor of the state, pay into the state treasury on or before the tenth day of each month all money due the state remaining in his hands on the first day of that month.

County responsible to state for full tax levied.

2351. SEC. 112. Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double or erroneous assessments, as provided in this act.

Default of treasurer.

2352. SEC. 113. If any county treasurer prove to be a defaulter to any amount of state revenue, such amount shall be made up to the state within the next three years by additional levies, in such manner as to amounts, as the board of county commissioners may direct. In such cases the county can have recourse to the official bond of the treasurer for indemnity; *provided*, that payment of the delinquent tax by the county, shall not be construed to re-

lease the delinquent tax-payer from his obligation to such county.

2353. SEC. 114. When interest is due and allowed by the state treasurer on the redemption of auditor's warrants, the same shall be receipted on the warrants by the holder of the same, with the date of the payment; and no interest shall be allowed by the auditor of state except such as is thus receipted. Interest on warrants.

2354. SEC. 115. If the state treasurer or any county treasurer, discount auditor's warrants at less than the amount due thereon, either directly or indirectly, or through a third person, they shall be liable to a fine not exceeding one thousand dollars, to be prosecuted as other fines. Discount of warrants. Penalty.

2355. SEC. 116. County treasurers shall be liable to a like fine for loaning out or in any manner using for private purposes, state or county funds in their hands, and the state treasurer shall be liable to a fine of not more than ten thousand dollars for a like misdemeanor, to be prosecuted by the attorney general in the name of the state. Liability of treasurer for loaning or using funds.

2356. SEC. 117. The county treasurer shall certify in writing, the entire amount of taxes and assessments due upon any parcel of real estate, and all sales of the same for unpaid taxes or assessments shown by the books in his office, with the amount required for redemption from [of] the same, if still redeemable, whenever he shall be requested so to do by any person having any interest in said real estate, and paid or tendered his fees for such certificate, at the rate of fifty cents for the first parcel in each township, incorporated town or city, and ten cents for each subsequent parcel in the same township, town or city. Each description in the tax list shall be reckoned a parcel in computing the amount of such fees. Treasurer to certify to tax, sale, etc., when requested. Fee.

2357. SEC. 118. Such certificate, with the treasurer's receipt or receipts showing the payment of all the taxes therein specified, and his certificate of redemption from the tax sales therein mentioned, shall be conclusive evidence for all purposes, and against all persons, that the parcel of real estate in said certificate and receipt or receipts described, was at the date thereof free and clear of all taxes Certificate and treasurers' receipt shall be evidence.

and assessments and sales for taxes or assessments, except sales whereon the time of redemption had already expired, and the tax purchaser had received his deed.

Treasurer liable for errors.

2358. SEC. 119. For any loss resulting to the county or to any tax purchaser or tax payer, from an error in said certificate or receipt or receipts, the treasurer and his sureties shall be liable on his official bond.

Sale of property distrained.

2359. SEC. 120. Property distrained shall be advertised and sold in such manner, and at such time and place as is prescribed by law for advertising and selling property by virtue of a writ of *fieri facias*; and the sum collected shall be accounted for and paid into the county treasury within thirty days after its collection.

Pay of officer for collecting.

2360. SEC. 121. The officer collecting money by virtue of such distress warrant shall receive the same compensation as is allowed by law for the execution of a writ of *fieri facias*, to be collected in addition to the amount due the state; and the proceedings in all other respects shall, as nearly as practicable, be the same as pertain to to the execution of said writ in other cases.

Transmittal of state funds.

2361. SEC. 122. It shall be the duty of all county treasurers to transmit by draft or otherwise, at the expense of their counties, all moneys in their hands belonging to the state, to the state treasurer.

Manner of turning over treasurer's office.

2362. SEC. 123. When a county treasurer goes out of office, he shall make a full and complete settlement with the board of county commissioners, and deliver up, in the presence of the clerk of the county, all books, papers, money and all other property appertaining to the office, to his successor, taking his receipt therefor. The board of county commissioners shall make a statement (so far as state dues are concerned) to the auditor of the state, showing all charges, for whatsoever purposes, which have been created against the treasurer during his term of office, and all credits which have been made, and other unfinished business charged over to his successor, and the amount of money paid over to his successor, showing to what year and to what accounts the amount so paid over belongs. They shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer elect.

2363. SEC. 124. Whenever any county treasurer shall fail to pay into the state treasury any moneys in his hands due the state, at the time prescribed by law, he shall in addition to other penalties be liable to the following: If he shall fail to pay over such moneys for the space of fifty days after such specified time, he shall forfeit his office as treasurer and be deemed a public defaulter; and the state auditor's certificate under seal, shall be evidence of such default; and the county commissioners shall immediately upon receipt of such certificate, declare the office of such treasurer vacant and fill such vacancy; and such treasurer shall not again be eligible to that office.

Failure to remit to auditor.

Penalty.

Certificate of auditor evidence of default.

2364. SEC. 125. Any officer who shall wilfully neglect or refuse to perform any of the duties imposed on him by this act, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment; the fine not to exceed one thousand dollars nor the imprisonment one year.

Penalty for non-feasance.

2365. SEC. 126. The entries made in the county treasurer's books, the assessment rolls and the warrants thereto attached, and the lists of lands sold for taxes recorded by said treasurer or by the clerk of the county, or a certified copy thereof, shall be *prima facie* evidence in all judicial proceedings and in all courts in this state.

Evidence.

2366. SEC. 127. If any county treasurer shall die, resign or be removed from office, or his term of office expire after selling any real estate for taxes and before executing a certificate or deed for the same, his successor being in office shall execute such certificate or deed, in the same manner that the treasurer making such sale might have done.

Execution of tax certificate and deeds.

2367. SEC. 128. When any fact, matter or thing is required by this act to be verified by oath or affirmation, any assessor, treasurer or county clerk may administer the same.

Oaths or affirmations.

2368. SEC. 129. When the treasurer of any county after the tax list is committed to him, ascertains that any real estate, horses, mules, asses, cattle, sheep, goats, swine or other personal property then in his county are omitted from the tax list, and has reason to believe that such

Additional assessments.

personal property has not been taxed in any other county for that year, he shall forthwith proceed to list, value and assess said property in the same manner that the assessor or county clerk might have done, and shall enter such assessment in his tax book, following the levies made and delivered to him by the clerk; and such entries shall be designated as additional assessments; and the taxes so levied and assessed by the treasurer, shall be as valid for all purposes as if the assessment had been made by the assessor, anything in this act to the contrary notwithstanding.

Same.

2369. SEC. 130. Such taxes shall be collected in the same manner as other taxes; and the county treasurer shall at the time of making his settlement with the board of county commissioners, report to them under oath all taxes collected upon assessments made by him, and the amount shall be charged to him by the county clerk, and the said commissioners shall allow such treasurer, in addition to all other fees and allowances, five per cent. upon the amount collected of all taxes so assessed and levied by him.

Fee for collection of.

Appeal to county commissioners.

2370. SEC. 131. Any person assessed by the treasurer as herein provided, who shall consider said assessment to be erroneous or the valuation of the property to be too high, may appeal therefrom to the county commissioners of the county in which the assessment was made, who shall hear and determine the complaint, and may reduce or remit the taxes as to them shall seem just and proper; but no such appeal shall operate to release property seized for taxes, unless the said commissioners shall decide that no taxes were due from the person so assessed.

Commissioners may remit.

Evidence of payment of tax.

2371. SEC. 132. When any person shall pay the taxes assessed upon any horses, mules, asses, cattle, sheep, goats, swine or other personal property in any county in the state, he may present the treasurer's receipt therefor to the county clerk of said county, who shall endorse thereon the number, description and value of the property assessed to such person, as contained in the tax list or lists on file in his office; and such receipt when so endorsed, shall be *prima facie* evidence of the payment of the taxes on the property described, and for the year mentioned therein. The clerk

shall be entitled to a fee of fifty cents for each endorsement so made.

Commissioners to procure abstract and map of real estate in county.

2372. SEC. 133. The county commissioners of each county in which any taxable real estate is situated, shall from time to time procure from the proper land office, an abstract of the real estate entered and subject to taxation under this act in the county, and shall cause a map or plat of such county to be made upon which the land so entered shall be designated.

Repeal.

2373. SEC. 134. An act entitled "an act to provide for the assessment and collection of revenue," approved February 11, 1870, and all acts amendatory thereto are hereby repealed; *provided, however*, that so much of said acts as shall be necessary to carry out, consummate or perfect any proceedings relative to real estate heretofore sold for taxes, shall continue in force for that purpose and no other; *and provided, further*, that all assessments and levies of taxes heretofore made, where the taxes have not been collected at the date of the passage of this act, shall be considered as assessments and levies made under the provisions of this act, and are hereby legalized and made lawful in all respects and for all purposes; and all further proceedings for the collections [collection] of the taxes so levied, or for the sale of real estate so assessed for taxes, shall be made under the provisions of this act.

Proviso.

To be in force from and after passage.

2374. SEC. 135. Inasmuch as the time will soon arrive when the assessors will be required to commence the assessment of the present year, it is the opinion of this general assembly that it is an act contemplated by section nineteen of article five of the constitution, which should take effect immediately; therefore this act shall take effect and be in force from and after its passage.

Approved, March 20, 1877.

CHAPTER LXXXVIII.

ROADS AND HIGHWAYS.

AN ACT CONCERNING ROADS AND PUBLIC HIGHWAYS.

Be it enacted by the General Assembly of the State of Colorado:

What roads declared to be public highways.

2375. SECTION 1. All roads and highways heretofore established in accordance with law, excepting those of corporations and individuals used as toll roads, under articles of incorporation properly filed and duly authenticated, and roads for private use, are hereby declared to be public highways of the respective counties through which they pass, and are to be kept in repair by the proper authorities of said counties as long as they remain in general use by the traveling public.

Proceedings in case of discontinuance of public highway.

2376. SEC. 2. Whenever in the opinion of the board of county commissioners of any county, there does not exist a need for a public road that is then in use by the citizens of said county, or the repairs of said public highway are burdensome to the citizens of said county in excess of the benefits derived therefrom, the said commissioners may, at a regular meeting of said board, appoint three disinterested qualified electors of said county, as viewers, to view said public highway and make report of said view to the board of county commissioners at their next regular meeting, setting forth fully in their report their finding, and if they recommend a discontinuance of said road, then the board may order the same vacated: *Provided*, that if such road runs on the county line between two counties, the county commissioners of both such counties shall appoint viewers and concur in an order vacating such road before the same be disestablished.

Proceedings in case of change of highway or location of new road.

2377. SEC. 3. Any person wishing to have any public highway changed, or a new highway laid out or located in any of the counties of this state, shall petition the board of county commissioners, which petition shall state the change asked to be made, giving the point of starting, and the terminus thereof, and the said petition shall be signed by not less than ten persons who reside within two miles of that

part of the road sought to be changed; and the petitioners shall deposit with the clerk of the county a sufficient sum to defray the expenses of viewing the proposed road, to be fixed by the board of commissioners, such sum to be paid into the county road fund, in case the prayer of the petitioners shall be refused, otherwise it shall be returned to the persons depositing the same, and if such highway or proposed highway be on the line between two counties, the boards of county commissioners of both such counties shall be petitioned, and the concurrence of both such boards shall be required to establish it; in such case each county shall open and maintain a definite part of the road, to be apportioned by mutual agreement between the said boards.

Appointment of road viewers and publication of notice.

2378. SEC. 4. It shall be the duty of the county commissioners of any county in this state, at their next meeting after the receipt of a petition, as required in the preceding section, to appoint from the qualified electors of said county, three disinterested persons as viewers, to view the road prayed for in said petition, and also to fix a day for the view of such road, and to cause to be posted notices in three of the most public places along the proposed new road, giving parties in interest notice that at such an hour on such a day, viewers will meet at the point designated in the petition as the starting point of said road, to attend to their duties as viewers of the said proposed road; said notices to be posted by one of the petitioners to be designated by the county commissioners and without cost to the county.

Issue and service of warrant to road viewers; their duties; penalty for wilful neglect or refusal to act.

2379. SEC. 5. The clerk shall issue a warrant directed to the viewers appointed, setting forth their appointment, and requiring them to meet at the day and place named by the board of county commissioners, and to proceed thence to view and locate such road, and to survey or cause the same to be surveyed and platted, and to return the said plat, together with a full report of their viewing, and an assessment of the damages and benefits accruing to the owner of any of the lands over which the same may pass by reason of the location thereof, and the probable cost of opening such road to travel; said plat and report to be returned by said viewers into the office of the county clerk on or before the first day of the next regular meeting

of the board of county commissioners; such warrant shall be delivered to the sheriff of the county to be served, and the sheriff shall serve the same by delivering a copy thereof to each of the viewers named therein. The original he shall return to the county clerk, with his endorsement of service. Any person appointed a road viewer, and duly served with such warrant, who shall wilfully neglect or refuse to act, shall be liable to a fine of twenty-five dollars, to be paid to the county, to be recovered in an action of debt before any justice of the peace of the county.

Manner of viewing road.

2380. SEC. 6. It shall be the duties of viewers of all public highways within this state, after receiving their authority to act, to meet at the time and place specified in the notice of their appointment and proceed to view the said road prayed for in the petition, (a copy of which shall be furnished them by the board of county commissioners), and commence at the point of starting named in the petition, and run out said road to the terminus by the most practicable route that they, in their judgment, can find; and in their report, which must be signed by at least two of the said viewers, they are to embody a plat of said road or changes they have made, and to make return thereof to the county commissioners within ten days after such view is completed.

Consideration of report of viewers by county commissioners.

2381. SEC. 7. Upon the return of such plat and assessment the board of commissioners shall proceed to consider the same, and all objections which may be made thereto, and shall determine whether such road shall be located and opened or not, and may refer the matter of such viewing and assessment to the same or other viewers, with directions to report in like manner.

Notice to be given of opening of road.

2382. SEC. 8. It shall be the duty of the county commissioners, within ten days after the return of any view of a public road, if in their judgment the public good require the laying out of the same, to cause notices to be posted at three places along the line of said road, that they have or will direct their proper officer to open and work such road as a public highway from and after ninety days from that date, and declaring thereby said road to be a public highway.

2383. SEC. 9. It shall be the duty of all viewers of public highways, in addition to the duties defined in section five of this act, to take into account all the damages and benefits arising from the laying out of any public highway, and report fully thereon, assessing the benefits accruing by such laying out or change and awarding those damaged by the same. Those who are damaged shall receive a warrant on the county treasurer for amount of damages in excess of benefits awarded in the said viewers report, and the said viewers shall receive a warrant on the county treasurer for their services for a sum to be fixed by the county commissioners, not exceeding five dollars each per day for each day's service rendered, and ten cents a mile each, for each mile actually traveled from their usual place of residence to the proposed road they are to view, and in addition to the above amount, the surveyor shall receive ten dollars as full compensation for a full and complete report and plat of the road laid out or rejected by the said viewers; and any person appointed a road viewer, and duly served with a warrant of such appointment, who shall wilfully refuse or neglect to act, shall forfeit the sum of ten dollars to the county, to be recovered by action of debt before any justice of the peace.

Assessment and payment of damages in excess of benefits; compensation of viewers; penalty for refusal to act as viewers after being served with notice of appointment; compensation of surveyors.

2384. SEC. 10. Whenever the viewers of any road shall have completed their labors, and returned to the county commissioners their final report on any road, it shall be the duty of said board of commissioners to have all of said report, including plat of said road, put upon record in their respective counties in the office of the recorder of deeds for such county.

Record of final report of road viewers.

2385. SEC. 11. In case any person appointed a viewer shall refuse or be disqualified to act or cannot be found, the other two viewers may supply such vacancy, or if only one of said viewers appear after such notice being served, he shall have power to fill such vacancy as exist [exists] and proceed to the view of said road.

In case of refusal or disqualification of one or more viewers to act; how vacancy filled.

2386. SEC. 12. The viewers appointed shall designate and mark out such road or roads as they may locate or lay out, either by stakes or turning a furrow on each side of said proposed road on prairie land, or by blazing trees or other appropriate landmarks in wooded or mountain districts.

In what manner location of road to be marked.

How damages in excess of benefits to be paid.

2387. SEC. 13. Whenever in any case the damages accruing to any person by reason of the opening of any such road shall exceed the benefits according to such reports of viewers, the same shall be paid the person or persons so damaged, by warrant on the county treasury for amount of such damages.

Deposit of amount in case owner of land is unknown.

2388. SEC. 14. If the owner or owners of any lands over which any such new road is located be not known or cannot be found, the damage or the excess thereof over the benefits accruing by reason of the opening of such road, shall be deposited and set apart to such owner or owners in the county treasury, and such deposit when made shall have the same effect as a payment.

What consent necessary to be obtained for location of road.

2389. SEC. 15. In laying out any road under the provisions of this act, it shall not be lawful to locate the same through any dwelling house nor within thirty yards thereof nor through any barn, stable, office, mill or other building, nor through any garden, orchard, vineyard or stable yard appurtenant to any dwelling house, without first obtaining consent of the owner or owners of such premises.

Declaration of public highway upon petition presented where owners donate right of way.

2390. SEC. 16. Whenever a petition shall be presented to the board of county commissioners of any county of this state, praying for a public highway, and the names of all the owners of all the land through which said road is to be laid out, shall be signed by the owners thereof to said petition, giving the right of way through the lands and accompanied by a plat of the road, it shall be the duty of the board of county commissioners, if in their opinion the public good requires it, to declare the same a public highway, and thereupon the plat shall be filed and recorded and the said road shall become a public highway, from and after that date.

By whom notices to be served or posted.

2391. SEC. 17. All notices which are required by any of the foregoing sections of this act, to be given or posted as directed by any section following this one, shall be served or posted by some one of the petitioners in such manner as is hereinbefore described, or as he shall be directed by the county commissioners, and the person serving said notices shall not be entitled to receive any compensation therefor from the county.

2392. SEC. 18. The manner of laying out any private wagon road from the dwelling of any person to any public road, and of condemning the lands necessary therefor, shall be the same as hereinbefore provided, excepting that the viewers of the same shall only receive compensation for one day's service, and mileage to and from their respective places of residence; and the petition in such cases need be signed only by such person and the expense of viewing and surveying such road, and the damage which may accrue to any person by reason of laying out the same, and the expense of opening such road shall be paid by such petitioner.

Manner of laying out private wagon road; compensation of viewers and payment of damages.

2393. SEC. 19. Whenever any public highway is to be laid out, or any alterations are made in the location of any public road, the county clerk shall notify the road overseers of the several road districts through which such road passes, which is to be laid out or changed, and for such notices the county clerk shall receive fifty cents each from the county treasury.

Notification to road overseers in case of laying out or change of highway.

2394. SEC. 20. All public highways now in general use are sixty feet wide, and all county or public roads hereafter to be laid out or changed, shall be sixty feet in width, unless otherwise ordered by the county commissioners.

Width of public highways.

2395. SEC. 21. When any public road heretofore laid out or traveled as such, or hereafter to be laid out or traveled, crosses any creek or stream of water, and such stream during any part of the year, is usually fordable where such road crosses or shall cross the same, the said ford and the banks of the stream adjacent thereto, and the roadway or track usually traveled, leading thereto from such highway, shall be deemed and taken to be part of such highway; and any person who shall obstruct any such ford, or the road leading thereto, or shall dig down the banks of such ford, or who shall erect any dam, embankment or other obstruction in such stream, or any wing-dam or other obstruction on the banks of said stream, for the purpose of raising the water of said stream upon the said ford, and so as to render the said ford impassable or more difficult of passage than theretofore, or who shall maintain any such dam, wing-dam, embankment or obstruction here-

Fords, obstruction of, or roadway leading thereto.

tofore erected, after being by the road overseer of the district notified to remove or abate the same, shall be liable to the same penalties as for obstructing a public highway, and no person or corporation, upon any pretense or authority, shall be permitted to erect a toll bridge over any stream, at or upon any public ford or road crossing or so near thereto as by the abuttments, embankments or piers of such bridge, to obstruct or render impassable the said ford, or the roadway leading thereto.

Penalty for bridge owner or corporation failing to remove obstructions to ford caused by their own acts.

2396. SEC. 22. Where any person or corporation hath heretofore erected a bridge over any stream, at or near the crossing of any highway used and traveled as such at the time of the erection of such bridge, and by fences, embankments, dikes, walls or other obstructions, hath obstructed the said ford or the road or trail leading thereto, as usually traveled where such stream is fordable, such person or corporation shall forthwith cause all such obstructions to be removed and abated, so that the public may enjoy the use of said ford as before the erection of said bridge; and for a failure to remove such obstruction within thirty days after notice shall be given by the road overseer, shall pay a fine of fifty dollars, to be recovered by an action of debt in the name of the people of the state of Colorado, in any court of competent jurisdiction, and the like fine for every day such obstruction is allowed to remain after the said thirty days, until such obstructions are removed or abated as hereinbefore required; the owner or owners of such bridge shall not demand nor receive toll thereat.

Levy and collection of property tax for road purposes.

2397. SEC. 23. The board of county commissioners of the respective counties of this state may levy a property tax for road purposes, which shall not exceed one dollar on each one hundred dollars, to be levied and collected in the same manner and at the same time as other property taxes are levied and collected in each year.

Who subject to payment of road tax; amount of labor in lieu thereof.

2398. SEC. 24. Every able bodied man between the ages of twenty-one and fifty years, shall annually pay to the overseer of roads of the district wherein he resides, a road tax of four dollars, or in lieu of such tax shall perform two days labor upon the public roads, whenever notified by the overseer of roads as herein provided; the provisions

of this section shall not apply to incorporated cities or towns.

Division of counties into road districts; election of road overseers; bond and conditions.

2399. SEC. 25. The board of commissioners shall divide their counties into suitable road districts, as in their judgment will best subserve the interests of the people of the whole county; in each district so formed there shall be elected annually, in the same manner as other district and precinct officers, a road overseer of such district, who shall hold his office for a period of one year, or until his successor is duly qualified, who shall file with the county clerk a sufficient bond, approved by the board of county commissioners, for the faithful performance of his duties as such road overseer, and to secure payment of any money that he may receive under the provisions of this act.

Duties of road overseers.

2400. SEC. 26. The road overseers shall cause all the public highways within their respective districts to be kept in good condition and clear from obstructions.

Letting of contracts for building of bridges.

2401. SEC. 27. When any bridge is to be built the estimated cost of which will exceed one hundred dollars, the work shall be let out by contract, and the board of commissioners shall advertise for sealed proposals for performing the work, in some newspaper published in the county, for a period of not less than three weeks; *provided*, that if there is no newspaper published in the county where such bridge is to be built, the board of county commissioners shall cause to be posted up in five of the most public places in said county, such advertisement, the same to be posted up at least ten days before such contract shall be let; such advertisement shall describe the bridge to be built, its location, and shall refer all persons to the person or persons holding the plans and specifications therefor, and such contract so to be let shall be awarded to the lowest responsible bidder, to be paid for out of the road fund or general fund, as the county commissioners may determine.

Refusal to perform work on road by order of overseer; levy and sale of property to satisfy delinquency

2402. SEC. 28. Any person neglecting or refusing to perform such work according to the order of said overseer, for a period of ten days, such person shall be considered delinquent, and the overseer shall proceed to levy upon and sell at public auction (after giving ten days' notice), to the highest bidder for cash, any property of said delinquent, or

so much thereof as may be necessary to satisfy such delinquency and costs.

Notification to perform work on roads.

2403. SEC. 29. Each road overseer shall, between the first day of April and the first day of September in each year, notify all persons in his district subject to road tax to appear at such time and place and with such tools as he may designate, to perform the work required in lieu of road tax; *provided*, that nothing in this section shall prevent the overseer from calling out any such persons to perform such work at any time when he shall consider such work needed.

Annual report of road overseers.

2404. SEC. 30. The road overseers shall report to the county commissioners at their regular meeting on the first Monday in October of each year, a list of all persons in his district subject to a road tax, the names of all persons who have performed the work instead thereof, amount of money collected and paid out by him, from whom received, to whom and for what paid, the number of days he himself has been in actual service, and the list of delinquents.

Compensation of road overseers.

2405. SEC. 31. The road overseers of the respective counties shall receive as compensation for their services a sum to be fixed by the county commissioners, not to exceed four dollars per day for each day's service actually rendered, when in the performance of their duties as road overseers, payable out of any road fund in the hands of the county treasurer belonging to their district.

Apportionment and payment of road fund.

2406. SEC. 32. The property tax levied for road purposes shall be collected as hereinbefore stated and only paid out on orders of the board of county commissioners issued by the county clerk as other county orders are issued and paid; such orders only to be paid out of moneys belonging to the general road fund, and the county commissioners shall apportion the road fund among the several road districts of their respective counties, as in their judgment shall best subserve the interests of the county.

Penalty for obstructing or damaging public highway.

2407. SEC. 33. If any person shall wilfully erect or place or cause to be erected or placed, within any public highway any obstruction thereto, or shall wilfully obstruct or encroach upon any public highway, by falling trees or placing stones therein, or by erecting any fence, house or structure therein, or by digging holes therein, or if any

person shall tear down or burn, destroy or injure any bridge or any public highway, or shall wilfully or carelessly permit waste water to flow into any public highway so as to damage such public highway, every person so offending shall pay a fine of not less than ten dollars nor more than three hundred dollars, and a like fine of ten dollars for each day that such obstruction shall be suffered to remain in said road.

Erection of dams across streams, and causing overflow beyond high water mark.

2408. SEC. 34. No person, mining or irrigating ditch or milling company, shall be allowed by virtue of any charter or law granted or made, for mining, milling or irrigating purposes, to dam the waters of any stream in this state so that the water or waters of such stream, raised by such damming, shall flow back to a higher point or mark on the margin of such stream than high water mark, so the water thus dammed shall overflow any wagon road or other road running or being situated on the side or banks of such stream, or so as to cause the water so dammed to undermine, weaken or damage any bridges, walls or embankments of such road.

Penalty for violation of preceding section.

2409. SEC. 35. Any person violating any of the provisions of the preceding section, shall be liable to a fine of not less than twenty-five dollars, nor more than five hundred dollars, and shall also be liable to the party injured, for any damages resulting therefrom, to be recovered by civil action.

Penalty for refusal to construct bridges at crossing of ditch and highway.

2410. SEC. 36. Whenever the owner or owners of any ditch, race or drain, for mining, milling, manufacturing or irrigating purposes, shall fail, neglect or refuse to construct a good and sufficient bridge over such ditch wherever the same crosses the highway within thirty days after notice shall be served on him by the road overseer of such district, every such owner and every such officer or trustee in any corporation owning such ditch, shall be liable to a fine of fifty dollars and a fine of five dollars for every day that such ditch shall remain unbridged after the expiration of such thirty days, and such bridge shall be thereafter maintained by the county.

2411. SEC. 37. That in case any road tax in any county shall be unpaid and delinquent, the road overseer of the district wherein the same is due and payable, may

Notice for payment of delinquent road tax.

serve on any debtor of the person from whom such road tax is due, a notice printed or in writing or partly printed and partly written, that such road tax has been demanded and is unpaid, and requiring such debtor of the person delinquent to pay to such road overseer, the full amount of such road tax, with fifty cents additional thereto for costs of such notice, and every such notice may require such debtor to appear before some justice of the peace of the county at a day and hour named therein, to answer said road overseer as the garnishee of the delinquent tax payer.

Notice to have effect of garnishee process.

2412. SEC. 38. The service of such notice shall have the same effect as the service of a garnishee process, and upon the service thereof, the person upon whom the same is served shall be authorized to pay to the road overseer the amount of tax assessed against said delinquent, together with fifty cents in addition thereto, and such payment shall to the extent thereof bar any further liability therefor to such delinquent tax payer.

Debtor liable to costs for failure to pay amount of tax; fees of road overseer for service of notice.

2413. SEC. 39. If any such debtor, upon whom service of any such notice is made, shall fail or refuse to pay the road overseer serving the same the amount of such tax, with the fee of fifty cents for serving such notice, as provided by the two preceding sections, he shall be liable for all costs thereafter accruing in the said proceedings of garnishment. Every road overseer, for the service of such notices, shall be entitled to receive fifty cents.

Disposition of fines and penalties.

2414. SEC. 40. All fines, penalties and forfeitures provided by this act, where not otherwise specified, shall be recoverable by action of debt, in the name of the people of the state of Colorado, before any court of competent jurisdiction; all such fines, penalties and forfeitures shall be paid into the county treasury and shall be a fund for the improvement of roads of the road district wherein the same accrued.

Repeal.

2415. SEC. 41. Chapter seventy-six of the revised statutes, an act "to establish a territorial road from the town of Evans in the county of Weld to Boulder city, in the county of Boulder, and for other purposes," approved February 11, 1870.

An act "to amend chapter seventy-six of the revised stat-

utes of Colorado territory," approved February 10, A. D. 1870.

An act "to establish a territorial road," approved February 9, A. D. 1872.

An act "to estabish a territorial road," approved February 9, A. D., 1872.

An act "to amend section twenty-seven and thirty of chapter seventy-six of the revised statutes of Colorado," approved, February 6, 1872.

An act "to amend chapter seventy-six of the revised statutes," approved, February 13, A. D., 1874.

An act "to amend an act, entitled roads and highways," approved, February 9, 1874.

An act "to establish a territorial road in Huerfano county," approved, February 13, 1874.

An act "regulating the pay of road overseers in Weld and Larimer counties," approved, February 13, 1874.

An act "to legalize the roads and highways of Boulder, Douglas, Las Animas, Weld, Larimer, Jefferson, Arapahoe, El Paso, Lake, Costilla, Bent, Pueblo and Huerfano counties, established by order of the county commissioners of said county commisioners of said counties," approved, February 12, A. D., 1874.

An act "regulating the pay of road overseers in Douglas and other counties," approved February 9, 1876.

An act in relation to road law in Lake and Saguache counties, approved, January 11, A. D., 1876, all of the late territory of Colorado, be and are hereby repealed; *provided*, that the repeal of such chapter or acts, or any of them, shall in no wise take away, divest or impair any right acquired while the same remained in force.

Approved, March 22, 1877.

CHAPTER LXXXIX.

SALARIES.

AN ACT RELATING TO THE JUDGES OF THE SUPREME COURT OF THE STATE OF COLORADO,

[Session Laws, 1870.]

Time within which motions, demurrers, etc., are to be determined by judges district court.

2416. SECTION 1. Every motion, demurrer, issue or other matter, arrising in any cause pending or to be brought in any district court of this state, and which shall be submitted to any such court for judgment or decision thereon, shall be determined by the court within ninety days after the adjournment of court: *Provided*, that this section shall not be so construed as to prohibit a decision after the expiration of the time limited, but only as working a forfeiture as hereinafter provided.

Penalty for failure or neglect to give decision within given time.

2417. SEC. 2. If any judge of any district court, to whom any motion, demurrer, issue, or other matter arising in any cause, shall be submitted for judgment or decision, shall fail or neglect to decide or give judgment upon the same, within the time limited by section one of this act, he shall not receive from the state treasury any salary for the quarter in which such failure shall occur: *Provided*, that this section shall not apply in case of the sickness or death of the judge.

What certificate to be made in auditing account of judge.

2418. SEC. 3. That the auditor of the state, before auditing or allowing the account of any judge for salary, shall require such judge to certify that all motions, demurrers, issues, and other matters arising in any cause, which have been submitted to him for judgment or decision thereon, have been determined as required in the first section of this act.

AN ACT TO PROVIDE FOR THE PAYMENT OF SALARIES TO OFFICERS OF THE EXECUTIVE AND JUDICIAL DEPARTNENTS OF THE STATE OF COLORADO.

Be it enacted by the General Assembly of the State of Colorado:

Salaries of state officers.

2419. SECTION 1. The governor shall receive an annual salary of three thousand dollars, and the further sum of one thousand dollars for the payment of a private secretary.

The lieutenant-governor shall receive an annual salary of one thousand dollars.

The secretary of state shall receive an annual salary of twenty-two hundred dollars, and the further sum of one thousand dollars for the payment of a clerk.

The auditor of state shall receive an annual salary of two thousand dollars.

The state treasurer shall receive an annual salary of two thousand dollars.

The superintendent of public instruction shall receive an annual salary of two thousand dollars.

The attorney general shall receive an annual salary of two thousand dollars.

The judges of the supreme courts shall each receive an annual salary of thirty-two hundred and fifty dollars.

The judges of the district courts shall each receive an annual salary of thirty-two hundred and fifty dollars.

The district attorneys shall each receive an annual salary of eight hundred dollars and all fees.

2420. SEC. 2. The salaries aforesaid shall be payable in monthly installments at the end of each and every month from the date of the qualification of the said officers respectively, for their respective offices, and upon request, the auditor shall draw warrants upon the state treasurer accordingly in favor of the several officers aforesaid. In what manner salaries to be paid.

2421. SEC. 3. Inasmuch as there is no existing law for the payment of salaries to the said officers, this general assembly is of the opinion that an emergency exists requiring this act to take effect without delay, therefore this act shall take effect immediately. Emergency.

Approved, February 19, 1877.

CHAPTER XC.

STATE SEAL.

AN ACT PROVIDING FOR THE ADOPTION AND PROCURING OF A SEAL FOR THE STATE OF COLORADO, AND DESIGNATING THE OFFICER WHO SHALL LAWFULLY USE THE SAME AND BE ITS CUSTODIAN, AND TO DECLARE THE PENALTY FOR ILLEGALLY USING OR COUNTERFEITING THE SAID SEAL, AND TO REPEAL CHAPTER LXXVIII OF THE REVISED STATUTES.

Be it enacted by the General Assembly of the State of Colorado:

Style and device of seal.

2422. SECTION 1. That the seal of the state shall be two and one-half inches in diameter, with the following device inscribed thereon: An heraldic shield, bearing in chief, or upon the upper portion of the same, upon a red ground, three snow capped mountains; above, surrounding clouds; upon the lower part thereof, upon a golden ground, a miner's badge, as prescribed by the rules of heraldry; as a crest above the shield, the eye of God, being golden rays proceeding from the lines of a triangle; below the crest and above the shield, as a scroll, the Roman fasces, bearing upon a band of red, white and blue the words, "Union and Constitution;" below the whole, the motto "*Nil Sine Numine;*" the whole to be surrounded by the words "State of Colorado," and the figures "1876."

Punishment for illegal use, forgery, counterfeiting, etc., of state seal.

2423. SEC. 2. Any person who shall illegally use or affix the seal of this state to any written or printed document whatever, or shall fraudulently forge, deface, corrupt, or counterfeit the same, or affix said forged, defaced, corrupted, or counterfeited seal to any commission, deed, warrant, pardon, certificate or other written or printed instrument, or shall have in his or her possession or custody any such seal, knowing it to be falsely made and counterfeited, and shall wilfully conceal the same, shall, upon conviction thereof, be punished at hard labor in the penitentiary for a term of not less than two years, nor more than ten years, at the discretion of the judge of the court before whom the conviction was obtained.

Custodian of seal.

2424. SEC. 3. The secretary of state is alone authorized to use or affix the seal of this state to any document whatever, and he only in pursuance of law; and the said secre-

tary is hereby made the custodian of the seal of the state and responsible for its safe keeping.

2425. SEC. 4. The secretary of state is hereby authorized and required to procure, for the use of the state, a seal as described in section one of this act, and the auditor is hereby authorized to audit the bill for the same and draw his warrant on the treasurer for the amount of said audited bill. Secretary to procure seal.

2426. SEC. 5. That chapter seventy-eight of the revised statutes of Colorado is hereby repealed. Repeal.

Approved, March 15, 1877.

CHAPTER XCI.

SCHOOL OF MINES.

AN ACT TO PROVIDE FOR THE INCORPORATION, MAINTENANCE, MANAGEMENT AND SUPPORT OF THE SCHOOL OF MINES.

Be it enacted by the General Assembly of the State of Colorado:

2427. SECTION 1. The state school of mines, located at Golden, in the county of Jefferson, is hereby declared to be a body corporate under the name of "School of Mines," and by that name may sue and be sued; may take and hold real and personal property by gift, bequest, devise or purchase for the state, and may sell and dispose of the same when authorized so to do by law. Incorporation, rights and privileges.

2428. SEC. 2. There shall be a board of trustees of said school of mines, to be composed of five persons, who shall, except as hereinafter provided, hold their office for a period of four years and until their successors are appointed and qualified. Any three of said board of trustees shall constitute a quorum for the transaction of business, and the said board shall have such powers and perform such duties as are hereinafter specified. Number of trustees and term of office.

2429. SEC. 3. The first board of trustees shall be composed of the following persons, who are hereby appointed for such purpose, to wit: William A. H. Loveland, Francis E. Everett, James T. Smith, Alpheus Wright and N. P. Hill, the first three of whom shall hold their office First board of trustees designated.

until the first day of February, A. D. 1881, and the other two until the first day of February, A. D. 1879.

Oath of trustees.

2430. SEC. 4. Every trustee hereafter appointed, shall, before entering upon the duties of his office, take an oath to support the constitution of the United States and the constitution of the state of Colorado, and to faithfully perform the duties of his said office of trustee to the best of his ability and understanding.

Powers and duties of board of trustees.

2431. SEC. 5. The said board of trustees shall have the control and management of the said school of mines, and of the property belonging thereto, subject to the laws of this state, and may make all needful by-laws and regulations for the government of said board, and for the management and government of said school of mines, not inconsistent with the laws of this state.

Object of the school of mines.

2432. SEC. 6. It shall be the object of such school of mines to furnish facilities for the education of such persons as may desire to receive special instruction in chemistry, metallurgy, mineralogy, geology, mining, mining engineering, mathematics, mechanics and drawing.

Procuring of machinery and additions to buildings.

2433. SEC. 7. The said board of trustees are hereby authorized to procure such machinery and other appliances, and to make such necessary additions to the school of mines building as may be necessary to carry out the object and intention of such institution; and to promote the welfare thereof, whenever the funds provided for the support of said school of mines will warrant the same.

Who may receive instruction at school of mines.

2434. SEC. 8. The said school of mines shall be open and free for instruction to all *bona fide* residents of this state, without regard to sex or color, and with the consent of said board, students from other states or territories may receive education thereat upon such terms and at such rates of tuition as the board may prescribe.

Officers of board of trustees; meetings.

2435. SEC. 9. The said board shall, at their first meeting, and biennially thereafter, elect one of their number president of said board, and shall also appoint a secretary and treasurer, either from their own number or other suitable persons, as they may deem best, and prescribe their duties, and may at any time in their discretion remove such secretary or treasurer. And the trustees

hereby appointed shall hold their first meeting as soon as practicable after this act shall take effect. All meetings of said board shall be held at the town of Golden, in the county of Jefferson, in this state.

Vacancies in board; how to be filled.

2436. SEC. 10. The governor of this state, with the advice and consent of the senate, shall, at each regualar session of the general assembly to be held after the year 1877, by appointment, fill all vacancies in said board of trustees, occuring either by expiration of their term of office or otherwise; and any vacancy occuring in such board when the general assembly is not in session may be temporarily filled by the governor until the next meeting of the general assembly.

Annual report of president of board.

2437. SEC. 11. The president of said board shall be known as president of the school of mines, and shall annually, on or before the tenth day of December in each year, make a report to the governor of this state of the prosperity and condition of said school of mines, containing such statistical and other information pertaining thereto as he may deem necessary and useful, and also a detailed statement of the receipts and expenses of such institution.

Levy and collection of tax for support of school of mines.

2438. SEC. 12. There shall be assessed and levied upon all taxable property, both real and personal, in this state, in each year, the following tax, for the support of said school of mines, to-wit: one-tenth (1-10) of one mill on each dollar of the yearly assessed value of such property, to be known as the school of mines tax, which shall be payable only in money, and shall be assessed, levied and collected in the same manner and at the same time as is now or may be prescribed by law for the assessment and collection of state revenue.

To be kept as the school of mines fund.

2439. SEC. 13. It shall be the duty of the county treasurer of each county to keep the said fund separate from all other funds collected by him, and to transmit the amount thereof in his hands monthly to the state treasurer, who shall keep the same as a separate fund, to be known as the school of mines fund.

2440. SEC. 14. The state auditor shall, from time to time, draw his warrants upon said fund, in favor of the treasurer of the school of mines, upon the presentation to

Monthly expenditures; how to be paid.

him by such treasurer of the order of the president of the school of mines, countersigned by the secretary thereof, and in such sum or sums as may be necessary to defray the monthly expenditures of said institution specified in such order or orders, and the said warrants shall be paid by the state treasurer out of such fund.

Bond of treasurer; conditions of.

2441. SEC. 15. The said board of trustees shall require the treasurer of the school of mines to give such bond as they may deem sufficient to protect said institution against loss of any funds which may come into his hands as such treasurer, conditioned for the safe keeping and faithful disbursement thereof; and the said treasurer of the school of mines shall not pay out any of the funds which shall come into his hands as such treasurer, except upon the order of the president of the school of mines, countersigned by the secretary thereof.

Unexpended appropriation of 1876.

2442. SEC. 16. The unexpended balance of the appropriation made to the school of mines by the legislature of Colorado, in the year 1876, shall constitute a part of the school of mines fund, and shall be used for the support of said school of mines, for the year ending December 31, 1877.

Fees for assays and analyses; disposition of.

2443. SEC. 17. It shall be lawful for the professor or principal of the said school of mines, who shall be appointed by the said board of trustees, to charge and collect such reasonable fees for any and all assays and analyses made by him as the said board may prescribe, an account of which shall be kept by said principal, and paid over monthly to the treasurer of said school of mines, which shall become a part of the school of mines fund.

Vesting of title to property of school of mines in board of trustees.

2444. SEC. 18. As soon as practicable after the first board of trustees herein provided for shall be organized, all property, both real and personal, belonging to such school of mines, shall be transferred and vested in the trustees herein provided for and their successors in office, in trust for the use and benefit of the state of Colorado.

Disposition of school of mines fund.

2445. SEC. 19. The school of mines fund shall be used solely for the support of the school of mines and for no other purpose whatever, notwithstanding any provision in the act to establish the office of commissioner of mines.

2446. SEC. 20. This act shall not take effect unless the

fee simple title to the real estate now occupied and controlled by the said school of mines, shall, within eighty days from the passage of this act, be vested in the trustees of the school of mines, free of any condition of defeasance whatsoever. When the said title shall be so vested, it shall be the duty of the attorney general to certify such fact in writing to the state auditor, and the state auditor shall notify the county clerks of the several counties of this state of the same, in order that [the] tax herein provided may be properly levied and assessed.

Vesting of title of real estate of school of mines in board of trustees within eighty days necessary to the taking effect of this act.

Approved, April 7, 1877.

CHAPTER XCII.

SCHOOLS.

AN ACT TO ESTABLISH AND MAINTAIN A SYSTEM OF FREE SCHOOLS.

Be it enacted by the General Assembly of the State of Colorado:

2447. SECTION 1. The superintendent of public instruction, the secretary of state and attorney general, shall constitute a state board of education, of which the superintendent of public instruction shall be president.

State board, how constituted.

2448. SEC. 2. The state board of education shall meet at the state capitol on the last Saturday in December, in each year, and at such other times and places, as may by them be deemed necessary, and shall have power to adopt any rules and regulations not inconsistent with law, for its own goverment, and for the government of the public schools.

Meetings and powers.

2449. SEC. 3. The board is authorized and empowered to issue state diplomas to such professional teachers as may be found upon examination, or by diplomas from other states requiring similar qualifications, to possess the requisite scholarship and culture, and who may also exhibit satisfactory evidence of an unexceptional moral character, and of eminent professional experience and ability, and who have taught for two years in the state. All such diplomas shall be countersigned by the state superintendent of public instruction, and shall supercede the necessity

State diplomas; to whom issued; use of.

of any and all other examinations of persons holding the same, by county, city or local examiners; and such diplomas shall be valid in any county, city, town or district in the state, during the life-time of the holder, unless revoked by the state board of education.

Grades of diplomas.

2450. SEC. 4. The diplomas issued by the state board of education shall be of two grades. The first grade shall be evidence of the fitness of the holder thereof to teach in the high schools of the state; and the second grade shall be evidence of the fitness of the holder thereof to teach in any of the schools of the state of a lower grade than the high school.

How revoked.

2451. SEC. 5. The state board of education may at any time revoke a state diploma, upon satisfactory evidence that the holder thereof has become unworthy the same; *provided*, that before revoking any such diploma, the holder thereof shall have at least thirty days' notice to appear before the state board and refute any charges brought against him.

When elected, tenure of office.

2452. SEC. 6. At the general election, to be held in the year of our Lord one thousand eight hundred and seventy eight, and every two years thereafter, a state superintendent of public instruction shall be elected by the qualified electors of the state, who shall hold office for the term of two years, from the second Tuesday of January next after his election, and until his successor is duly elected and qualified.

Oath and bond.

2453. SEC. 7. Before entering upon his duties he shall take and subscribe the oath of office prescribed by the constitution, and shall also execute a bond, in the penalty of five thousand dollars, payable to the state of Colorado, with sureties to be approved by the state auditor, conditioned upon the faithful discharge of his official duties, and the delivery to his successor, of all books, papers, documents and other property belonging to the office. Said bond and oath shall be deposited with the secretary of state.

2454. SEC. 8. He shall have an office at the seat of government, where shall be kept an official seal, and all books and papers appertaining to the business of his office.

He shall file all papers, reports and public documents transmitted to him by the school officers of the several counties, each year separately, and hold the same in readiness to be exhibited to the governor, or to any committee of either house of the general assembly. Copies of all papers filed in his office, and his official acts may be certified by him, and when so certified, shall be evidence equally and in like manner as the original papers. Keep office where; duties.

2455. SEC. 9. He shall have a general supervision of all the county superintendents and of the public schools of the state. He shall prepare, have printed and furnish to all officers charged with the administration of the laws relating to public schools and to teachers, such blank forms and books as may be necessary to the discharge of their duties. But he shall not copy-right such forms, nor be directly or indirectly compensated by reason of the sale thereof. He shall have the laws relating to public schools printed in pamphlet form, and annexed thereto, forms for making reports and conducting school business, and shall supply school officers, school libraries and state libraries with a copy each. Said printing to be paid for out of the printing fund, on the warrant of the auditor, on bills approved by the superintendent of public instruction, and attested by secretary of state. Duties to prepare blanks and distribute the same, also the school law.

2456. SEC. 10. He shall, on or before the tenth day of December, in every year preceding that in which shall be held a regular session of the general assembly, report to the governor the condition of the public schools, the amount of state school fund apportioned, and sources from which derived, with such suggestions and recommendations relating to the affairs of his office, as he may think proper to communicate. It shall be his duty to visit annually such counties in the state as most need his personal attendance, and all counties, if practicable, for the purpose of inspecting the schools, awakening and guiding public sentiment in relation to the practical interests of education, and diffusing as widely as possible, by public addresses and personal communication with school teachers and parents, a knowledge of existing defects, and of desirable improvements in the government and instruction of the schools; and he shall open Biennial report; visit each county for what purpose; correspondence.

such correspondence as may enable him to obtain all necessary information relating to the system of public schools in other states; and he shall receive out of the state treasury, for actual necessary traveling expenses, and other expenses while traveling on the business of the department, not exceeding five hundred dollars per annum, for which he shall render an itemized bill to the auditor of state, who is hereby authorized to draw his warrant therefor; and an office, fuel, furniture, postage, books, stationery, and other contingent expenses pertaining to his office, shall be furnished in the same manner as those of the other departments of the state government.

State fund, distributed when; how notify different officers; traveling expenses paid; contingent expenses, how paid

2457. SEC. 11. The income of the state school fund and taxes collected by the state for the support of the public schools, which shall be received up to the first day of January and the first day of July of each year, shall be distributed annually between the first day of January and the first day of February, and the first day of July and the first day of August, respectively, in each year, among the several counties in the state, from which reports have been received by the superintendent of public instruction, as provided in this act, in proportion to the number of children of school age, as shown by the census list of each county. And the superintendent of public instruction shall certify said apportionment to the state auditor, and upon such certificate the auditor shall draw his warrant on the state treasurer in favor of the county treasurer of each county for the amount due said county. The superintendent shall also certify to the treasurer and superintendent of each county the amount apportioned to such county.

Assistant librarian.

2458. SEC. 12. He may employ an assistant librarian, who shall have charge of the state library, under such regulations as may be prescribed by the state librarian or by law. Said assistant shall receive such salary as may be provided by law.

When elected; term of office; oath and bond.

2459. SEC. 13. There shall be elected in each county, at the general election, in the year one thousand eight hundred and seventy-seven, and biennially thereafter, a county superintendent of public schools, who shall take office on the second Tuesday of January next succeeding that in

which such election shall be held. He shall hold his office for two years, and until his successor shall be elected and qualified. Before entering upon the duties of his office, he shall take the oath prescribed by the constitution, and execute a bond payable to the people of the state of Colorado, with two or more sureties, to be approved by the board of county commissioners, in penalty of not less than two thousand dollars, to be increased at the discretion of said board, conditioned upon the faithful performance of the duties of his office, and the delivery of all moneys and property as such superintendent to his successors, which bond shall be filed in the office of the county clerk.

County commissioners fill vacancy.

2460. SEC. 14. Should the superintendent elect fail to qualify as aforesaid, or should there occur a vacancy in said office, the board of county commissioners shall, at their next meeting after such vacancy or failure to qualify occurs, appoint an eligible and suitable person, who shall qualify within ten days after his appointment, and who shall continue in office until the next general election thereafter. Should such appointee fail to qualify as aforesaid, another appointment shall be made in the same manner, until the vacancy shall be filled by appointment or election.

Meet and examine teachers; in what branches; give certificate.

2461. SEC. 15. On the last Saturday of February, May, August and November, in each year, he shall meet all persons desirous of passing an examination as teachers, in some suitable room at the county seat, notice of which shall be given in some newspaper in the county, or in case there is no paper published in the county, he shall give such notice as may by him be deemed necessary; at which time he shall examine all such applicants in orthography, reading, writing, arithmetic, English grammar, geography, the history of the United States, including the constitution of the United States, physiology, laws of health, the elements of the natural sciences, theory and practice of teaching, and so much of the school law as relates to the duties and responsibilities of teachers. If the applicant is to teach in a school of high grade, the examination shall extend to such additional branches of study as are to be pursued in such school. If satisfied of the competency to teach, and of the good moral character of the applicant, he shall give

such applicant a certificate, as provided in the following section.

Grades of certificates, renewals, temporary record.

2462. SEC. 16. The certificates issued by the county superintendents shall be of three grades, distinguished as first, second and third. The first grade certificate shall be valid for two years; the second grade for one year; the third grade for six months. A county superintendent may renew a certificate of the first grade by endorsing such renewal thereon. It shall be deemed a violation of law to grant a certificate of either of the above named grades without first examining the candidate thoroughly in all the branches as specified in section fifteen of this act. The superintendent may, however, upon satisfactory evidence of competency, issue a temporary certificate, which shall be valid only until the next regular examination, at which time the holder of such temporary certificate shall appear for a complete examination as aforesaid. It shall not be lawful to renew a temporary certificate, nor to grant a second one to the same person. The superintendent shall keep an official record, in a suitable book, of the persons so examined, containing the name, age, nativity, date of examination, and grade of certificate issued.

Deputy.

2463. SEC. 17. If for any cause the superintendent is unable to attend to the duties of his office, he may appoint a deputy, who shall take the usual oath or affirmation of office, and who may exercise all the functions of county superintendent, but such deputy shall draw no salary from the public fund; *provided*, that the superintendent may receive a per diem for the service of such deputy.

Reports; items.

2464. SEC. 18. On the first day of October in each year, the county superintendent shall make a report to the state superintendent for the school year which ended August thirty-first next preceding, which report shall contain an abstract of the reports made to him by the district secretaries, together with a statement of the financial affairs of his office and of such other matters as the state superintendent shall direct, or as he himself may deem essential in exhibiting the true condition of the schools under his charge.

2465. SEC. 19. The county superintendent shall apportion all school money to the school districts, in accordance

with the provisions of section seventy-two of this act, quarterly, to wit: On the first Monday in January, April, July and October, in each year. Immediately after such apportionments he shall certify to the county treasurer the amounts which are to be placed to the credit of the several districts, and notify the treasurer of each district of the amount placed to its credit.

Apportionment, when; notify officers.

2466. SEC. 20. It shall be the duty of the county superintendent to exercise a careful supervision over the schools of his county; to visit each school once each quarter it is in session; to see that all the provisions of this act are observed and followed by the teachers; to keep in a good and substantial bound book a record of his official acts, and of other matters required by law to be recorded; to obey the legal instructions of the state superintendent; and to exhibit his books and report the financial condition of his office to the board of county commissioners, on or before the twentieth day of August in each year, and shall cause to be published in some newspaper of his county, if such there be, on or before the thirty-first day of August, such financial statement.

Duties, visits, records; obey instructions; report to county commissioners; publish the same

2467. SEC. 21. If the county superintendent fails to make a full and correct report to the superintendent of public instruction, or refuses or neglects to report to the board of county commissioners, as required by this act, he shall, upon information from the superintendent of public instruction, or after being personally served by the board of county commissioners with a written notice to report within ten days, and having failed to do so, forfeit the sum one hundred dollars ($100), which sum the board of county commissioners may deduct from any money due him. Said forfeit may, however, in all cases, be recovered by suit upon his official bond.

Neglect of duty; forfeiture for same.

2468. SEC. 22. The county superintendent shall have power, and is hereby authorized, to administer oaths and affirmations to school directors, teachers and all other persons, in official matters relating to schools; but shall receive no fee for so doing.

May administer oaths.

2469. SEC. 23. The county superintendent shall appoint directors for any district which fails to elect, as pro-

Fill vacancies in district boards.

vided in section forty-four, and shall fill vacancies that may occur in any board of directors by reason of death, removal from office or from the district, resignation or otherwise, except in boards of directors of districts of the first class, and the officers so appointed shall hold office only until the ensuing regular election.

Ascertain boundaries of districts.

2470. SEC. 24. It shall be the duty of the county superintendent to ascertain the boundaries of each school district in his county, and to make and keep a record of the same in a suitable bound book, which record shall show definitely the boundaries of each district. In case the boundaries are found to be conflicting or incorrectly described, he shall harmonize the same and make a report of such action to the boards of school directors whose districts are affected thereby. District officers shall have access to such records for the purpose of examination, making copies or for other legitimate purposes.

Salary, bill for same, limit, books, etc., furnished by the county, qualifications, work no removal.

2471. SEC. 25. For the time necessarily spent in the discharge of his duty he shall receive five dollars per day, and ten cents for each mile necessarily traveled. He shall, as far as is practicable, render an itemized bill of his services and mileage each quarter to the board of county commissioners, and shall make oath that the bill is just and correct; whereupon the county commissioners shall order a warrant on the county treasurer, payable from the general county fund; *provided*, that the annual compensation so received shall in no case exceed eight hundred dollars; nor shall it exceed one hundred dollars for each regularly organized district in the county. The commissioners shall provide him with all necessary blank books, stationery, postage, expressage and other expenses of his office, not otherwise provided for, which last mentioned expenses shall be paid for from the county fund. And no person shall hereafter be eligible to the office of county superintendent of schools who is not a person of culture and practical experience and learning in those branches of education taught in the public schools, as provided in this act, and a person of good moral character.

2472. SEC. 26. It is hereby made the duty of the county treasurer, in each county, to keep a separate ac-

count with each school district in his county; to place to the credit of each the amount of money as certified to by the county superintendent, as provided in section nineteen, and to pay over the money so collected upon the presentation of the legally drawn warrants or orders of the district officers, entitled to draw the same; *provided*, that if the county superintendent shall notify the county treasurer in writing, that there has been a failure on the part of any board of directors to comply with the law, and that said money should be withheld from said board of directors, he shall retain the same until further notice from the county superintendent. All money which shall become forfeited by any district shall be put into the general school fund, and reapportioned as other moneys.

Duties of county treasurer; not to pay over funds in certain cases.

ORGANIZATION OF DISTRICTS, ETC.

2473. SEC. 27. For the purpose of organizing a new district, either from unorganized territory or from an old district, the parents and guardians of at least ten children, who shall possess the right to attend school in such new district, must petition the county superintendent in writing, which petition shall specify as near as may be the number and names of persons of school age, residing within the proposed boundaries of such new district. If such new district is to be formed from one or more old districts, the county superintendent shall direct some one of the petitioners who is a legal voter, to notify each elector residing within the district, so to be formed, by personal service as far as convenient, and to post a notice in three public places in said new district, that such a petition has been made, and that a meeting will be held, naming the time and place of such meeting, to determine the same.

Must contain ten children; notice served and posted.

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2474. SEC. 28. The qualified electors of such proposed new district, when assembled in accordance with the notice above required shall organize by electing a chairman and secretary. Every legally qualified elector, and none other, shall be entitled to vote at such meeting. After the organization of such meeting as above mentioned, a vote shall be taken by ballot, on the question whether or not the proposed district shall be organized. Those in favor of organization

Electors; two-thirds majority; directors hold till next regular election; report to county superintendent; hardship to head of family; limit in dividing districts

shall vote "yes," and those opposed "no." If two thirds of the legal voters so voting are found to be in favor of such organization, and not otherwise, the meeting shall proceed to elect by ballot, a board of directors of said district, who shall hold office until the ensuing regular election, as provided for in section forty-four (44) of this act. The secretary of said meeting shall immediately transmit to the county superintendent a copy of the proceedings of the meeting; upon the receipt of which, if the proceedings are found to have been in accordance with law, he shall establish and number such district, and enter a record of the same, and of the proceedings of the meeting, as provided in section twenty-four (24) of this act; *provided*, if such organization of a new district works great hardship to any head of a family, a statement of the facts may be submitted to the superintendent, and two disinterested persons, one to be named by the superintendent and one by the person effected, and if in their judgment, good cause be shown for the transfer, he may be transferred to another district; *provided further*, that no district shall hereafter be divided for the purpose of forming a new district, unless it contains an area of more than nine square miles, nor shall a district be divided, if by so doing, the remainder of the district shall be found to contain less than fifteen persons of school age; and when practicable, the district shall conform to government lines; *provided, also*, that no incorporate city or town shall hereafter be divided into two or more school districts.

Union of contiguous districts; majority determined.

2475. SEC. 29. Two or more contiguous districts may be united into one district or a fractional portion of one district may be detached from the same and added to a district contiguous to said fraction. For the purpose of effecting such union or transfer, each district shall, at a special meeting legally called for the purpose, determine by ballot whether or not a majority of the legal voters assembled are in favor of such union or transfer. Those in favor shall vote "yes," those opposed, "no." In the case of a vote for a union, if a majority in each district are in favor of the same, there shall be called a union meeting, by giving notice as provided in section twenty-seven, (27) at which union meeting the organization shall be perfected

by the election of officers and other necessary proceedings in the same manner as provided for the organization of districts in section twenty-eight (28) of this act.

Must establish school before money is paid over; may become void in six months; county superintendent may extend time; he shall annul after one year.

2476. SEC. 30. No new district formed as provided in sections twenty-seven (27) and twenty-eight (28) of this act, shall be entitled to any portion of the public school money until a school has actually commenced therein, and unless within six (6) months from the establisment of such district, a school be opened and maintained as required by law, then the action making such district, shall be void, and all actions had by such district, acting as a body corporate, shall cease and determine and all taxes which may have been levied in the old district or districts, out of which the new one was formed, shall be valid and binding upon the real and personal property of the new district, the same as if said new district had never been organized; *provided*, that the county superintendent may for good cause extend the said six (6) months to eight (8) months. Said time of limitations shall begin to run from the time of the meeting at which it was voted to organize the district. That whenever any district shall, for the period of one year, fail to maintain a school and to keep up its organization of officers, as required by law, the county superintendent shall declare such district annulled, and its territory may, by him, be attached to other districts, upon petition of the heads of families within such territory.

Joint districts; how formed; reports, etc.; separate teachers in.

2477. SEC. 31. A joint school district may be formed from territory belonging to two or more contiguous counties. For the purpose of organizing a joint district, the same preliminary steps shall be taken, and the same course pursued, as is provided for the organization of other districts, in sections twenty-seven (27) and twenty-eight (28). Such district shall be designated as "joint district number ——, of the counties of——— and ——," and shall be so numbered that it shall have the same number in all the counties from which it is formed. The petition required by section twenty-seven (27) shall be made to each county superintendent interested, who shall unite in forming such district; *provided*, that the school census, the record of attendance at school, the assessing of property, the collection

of taxes, and all other acts which from their nature should be separately kept, shall be kept and done, and the reports thereof made as if each portion of said joint district belonging to each county were an entire district in the respective counties. The teachers of such joint district shall have a certificate from the superintendent of the county in which the school house is located.

New districts to have just share of money, but not till a school begins.

2478. SEC. 32. When a new district is formed from one or more old ones it shall be entitled to a just share of the school moneys remaining to the credit of the old district or districts, after deducting for the payment of all outstanding debts, excepting debts incurred for building and furnishing school houses; *provided*, that no money shall be apportioned to such new district until a school shall have been commenced therein in good faith.

UNION HIGH SCHOOL.

Contiguous districts may form; committee elected from joint boards; county superintendent a member of committee.

2479. SEC. 33. Whenever the school boards of two (2) or more contiguous school districts shall each deem it advisable to establish a union high school, the county superintendent shall, at the request of two (2) of the secretaries of the boards, call a meeting of the boards interested, by giving personal notice to each member; which meeting shall elect by ballot from among the members of said boards, if a majority of the members of each board are present, a committee of three (3), to be known as the high school committee of such union school. The county superintendent shall be *ex-officio* an additional member of said committee, and shall preside at the meetings thereof. There shall be elected a secretary of such committee, and, if need be, a treasurer.

Tenure of office; vacancies how filled; compensation of secretary.

2480. SEC. 34. The members of said high school committee shall hold the office for and during the term they are members of their respective boards. All vacancies in said committee, other than such as are caused by the expiration of the term of office, shall be filled by the school board of which the person so vacating was a member. The secretary shall be elected annually, and may receive such compensation as the committee shall deem proper to allow.

2481. SEC. 35. The regular meetings of the high school committee shall be held on the first Saturday of March, June, September and December of each year, and special meetings may be held at any time upon the call of the county superintendent, or of two (2) members of the committee. Regular meetings; special meetings.

2482. SEC. 36. Said committee shall exercise all the powers and perform all the duties, with reference to said high school, that are accorded to and required of school boards throughout the state, as provided in section fifty (50) of this act, and shall have power to establish and prescribe the qualifications and manner of examination for admittance to the high school. Powers and duties of committee

2483. SEC. 37. After the first establishment of such a union high school, it shall be maintained until the then next regular apportionment of the county school fund, as follows: each district shall draw from its school fund and cause to be placed to the credit of high school fund such part of the whole expenses as shall be proportioned to the number of pupils attendant at such high school from such district. After the first year, or part of a year, so as above provided for, the said high school shall, so far as practicable, be rated as a separate district. It shall be entitled to draw from the general state and county funds its quota for attendance, as provided by section seventy-two (72) of this act, and the deficit shall be made up from the several district funds in proportion to the number of pupils from each district who attended said high school during the then past year. Apportionment of funds to high school first year, rated as separate district thereafter; deficit, how made up.

2484. SEC. 38. The high school may be maintained during forty (40) weeks in each year, and shall be free to all children in the county who are qualified for admission, according to the requirements prescribed by the committee, and whose districts contribute to its support. Free, to whom; maintained forty weeks.

2485. SEC. 39. Every district in the county which contributes to the support and patronage of said high school, shall, by its board of directors, be entitled to a voice in the election of members of the committee. Who shall elect members of committee.

SCHOOL DISTRICTS, OFFICERS AND ELECTIONS.

Each district a body corporate.

2486. SEC. 40. Each regular organized school district heretofore formed, or that may be formed, as provided in this act, is hereby declared to be a body corporate, by the name and style of school district No. ——, in the county of ——, and state of Colorado, and in that name may hold property and be a party to suits and contracts, the same as municipal corporations in this state.

Annual election; classes of districts, according to population; term of office; organization of boards.

2487. SEC. 41. There shall be elected in each school district of this state, annually, and in the manner prescribed in section forty-four (44) of this act, a board of directors. The number of persons that shall constitute each board of directors shall be determined as follows: The school districts shall be classified into first (1st), second (2d) and third (3d) classes; districts containing a school population of more than one thousand (1,000), shall be denominated districts of the first (1st) class; districts containing a school population of three hundred and fifty (350) and not exceeding one thousand, shall be denominated districts of the second class; and districts containing a population of less than three hundred and fifty, shall be denominated districts of the third class. At the next regular election hereafter, as provided in section forty-four (44) of this act, all districts of the first (1st) class shall elect by ballot two (2) directors for three (3) years, two (2) directors for two (2) years, and two (2) directors for one year, and annually thereafter there shall be elected two (2) directors for three (3) years. All districts of the second and third classes shall elect one (1) president for three (3) years, one (1) secretary for (2) years, and one (1) treasurer for one (1) year, and annually thereafter there shall be elected for three (3) years a person to fill the vacancy occurring. School boards of the first class shall, at their first meeting after their election, elect a president who shall be a member of the board, a secretary who may or may not not be a member of the board, and a treasurer who shall not be a member of the board; who shall each hold office for one year or until his successor is elected and qualified. In districts of the first and second classes, the boards, after organization, shall exercise all the power given to the electors of districts of the third class as specified in

section sixty-two (62) of this act; *provided*, that all districts organized under the territorial law of A. D. 1876, shall elect at the next regular election, only such district officers as may may be necessary to fill the vacancies occurring under the provisions of said law.

Present organization legalized.

2488. SEC. 42. Every school district in the state, which now exercises the prerogatives of a school district, and the legality of whose formation or organization has not been legally denied, and which has a board of school directors, duly qualified according to the usual method, and has exercised the rights and enjoyed the privileges of a legally and regularly established district for one (1) year, shall be and is hereby declared to be a legal school district.

What constitutes a district legally.

2489. SEC. 43. All school districts now formed or which may hereafter be formed, which shall continue to exercise, undisputed, the prerogatives and enjoy the privileges of a legally formed district, for the period of one year next succeeding the election of its officers, shall be deemed to be a legally formed district, and its legality shall not thereafter be questioned.

Annual election.

2490. SEC. 44. The regular election for electing members of the school board, shall be held annually in each district on the first Monday in May, at which time it shall be lawful to transact any business pertaining to schools and school interests. The secretary of each school board shall cause written or printed notices to be posted, specifying the day and the place of such election, and the time during which the ballot box shall be kept open, not less, however, than three hours, and further specifying at what hour any other business shall be transacted. Said notices shall be posted in at least three public places in the district, one of which shall be the school house, if there be one, at least six days previous to the time of the election. If the secretary fail to give such notice, then any two (2) legal voters residing in the district may give such notice, over their own names, and such election may be held after the day fixed by this act for such election. All elections shall be by ballot, and in the absence of a notice specifying the hour, the ballot box shall be opened at nine (9) o'clock A. M., and closed at four (4) o'clock P. M.

Notice.

Ballot-box open three hours.

Notice by two voters.

All elections by ballot.

Who are voters.

2491. SEC. 45. Every elector legally qualified to vote at a general election, having been a resident of the school district for thirty (30) days next preceding the day of election, and who shall have paid all school taxes assessed against him, shall be entitled to vote; *provided*, that no person shall be denied the right to vote at any school district election, or to hold any school district office on account of sex. Any person offering to vote, may be challenged by any legally qualified elector of the district, and any one of judges of the election shall thereupon administer to the person challenged an oath, as follows: "You do swear (or affirm) that you are a citizen of the United States, or that you have declared your intention to become such; that you have resided in this state of Colorado six months immediately preceding this election; that you are twenty-one years of age; that you have resided in this district thirty days next preceding this election; that there are no unpaid school taxes assessed against you; and that you have not voted at this election, so help you God, (or under the pains and penalties of perjury)." If he shall refuse to take such oath or affirmation, his vote shall be rejected. And any person guilty of voting illegally, shall be punished as provided in the general election law of this state. The president, secretary and treasurer of the district school board, shall act as judges of the election, and should any of them be absent at the opening of the polls, the electors present shall appoint a legal voter to fill the vacancy.

Sex no qualification.

Challenge.

Oath.

Judges of election.

Counting the vote.

2492. SEC. 46. Immediately after the closing of the polls, the judges shall proceed to count the votes, and the person or persons qualified to be elected, who shall receive the largest number of votes, shall be declared elected. If, for any cause, no election be held at the regular time, or if upon counting the votes there be a tie vote for any one or more of the offices, a special election shall be called by the board within ten (10) days, and notice thereof given as required in section forty-four (44) of this act. A failure to give the prescribed notice of such special election shall render the election void.

Tie vote.

Special election.

Failure to give notice voids the election.

2493. SEC. 47. The directors shall each, within twenty (20) days after his or her election, appear before some officer

authorized to administer oaths, and take oath he or she will faithfully perform the duties of his or her office [as] required by law, which oath shall be filed with the county superintendent, and in case of failure so to qualify, his or her office shall be deemed vacant, and the county superintendent shall appoint another and suitable person, who shall qualify immediately. The treasurer of each board shall give a bond in double the amount of money liable to come into his hands, said bond to be approved by and filed with the county superintendent. The directors elect shall take office immediately after qualifying, as aforesaid.

Oath of office.

Where filed.

Vacancy how filled.

Treasurer's bond.

2494. SEC. 48. Any school board shall have power to make such by-laws for their own government and for the government of the public schools under their charge, as they may deem expedient, not inconsistent with the provisions of this act, or the instructions of the superintendent of public instruction. District boards of the first class shall also have power to fill any vacancy which may occur in the board until the regular election, at which time the vacancy shall be filled for the unexpired term.

By-laws by the board.

Vacancies in districts of first class.

2495. SEC. 49. The regular meeting of each board shall be held on the last Saturday of March, June, September and December. The board may, however, hold such other regular, special or adjourned meetings as they may from time to time determine, or as may be specified in their by-laws.

Regular meetings.

Special meetings

2496. SEC. 50. Every school board, unless otherwise especially provided by law, shall have power, and it shall be their duty:

Powers and duties of boards.

First—To employ or discharge teachers, mechanics, and laborers, and to fix, allow and order paid their salaries and compensation, and the compensation of the secretary and treasurer of the board, and to determine the rate of tuition for non-resident pupils.

Employment and discharge of teachers, etc.

Compensation of same.

Second—To enforce the rules and general regulations of the state superintendent, to fix the course of study, the exercises and the kind of text-books to be used; *provided*, that but one kind of text-book of the same grade or branch of study shall be used in the same department of a school, and that after the adoption of any book, it shall not be changed

Fix course of study.

Text books.

One kind in same branch.

Not changed in less than four years.

in less than four years, unless the price thereof shall be unwarrantably advanced, or the mechanical quality lowered, or the supply stopped.

School furniture.

Third—To provide for school furniture, and for everything needed in the school house, or for the use of the school board.

Houses.

Fourth—To rent, repair and insure school houses.

To build or remove

Fifth—To build or remove school houses, and to purchase or sell school lots, when directed by a vote of the district so to do.

Sixth—To hold in trust for their district all real or personal property for the benefit of the school thereof.

Suspend or expel pupils.

Seventh—To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six years of age.

Number of teachers.

Eighth—To determine the number of teachers that shall be employed and length of time over and above three (3)

Length of school and school hours

months that the school shall be kept; to fix the time for the opening or closing of school, and for the dismissal of primary pupils before the regular time for closing schools.

Indigent children.

Ninth—To provide books for indigent children, on the written statement of the teacher, that the parents of such children are not able to purchase them.

Tenth—To require all pupils to be furnished with the proper and suitable books as a condition of membership in school.

Sectarian books.

Eleventh—To exclude from schools and school libraries, all books, tracts, papers or catechisms of a sectarian nature.

Twelfth—To require teachers to conform to the law.

Annual report.

Thirteenth—To make an annual report as required by law, to the county superintendent, on or before the tenth day of September in each year, in the manner and form and on the blanks prescribed and furnished by the superintendent of public instruction.

Fourteenth—To make a report directly to the state superintendent whenever instructed [by] him so to do.

Admit pupils from adjoining districts.

Fifteenth—The school board of any district may, with the concurrence of the board of an adjoining district or districts, admit pupils from either of said districts to a school within their own district; but said pupils shall be enumerated in

their respective districts, and the portion of the school money to which they may be entitled by such enumeration shall be applied to the support of [the] said school where they shall attend.

Board may establish high school.

2497. SEC. 51. The school board of districts of the first and second classes shall have the power to establish a separate high school whenever they shall deem it expedient or necessary, and shall have power to determine the qualifications for admission to such school, and shall exercise all the powers with reference to such high school which are accorded to them in relation to the schools of lower grade. *Provided*, that no school board shall build or lease any building especially for such high school, unless authorized to do so by a vote of the district, as provided in section sixty-two (62) of this act.

No building without vote of the district.

Duties of president.

2498. SEC. 52. The president, when present, shall preside at all meetings of the board and of the district, sign all orders on the district or county treasurer for the payment of money, and shall appear in behalf of his district in all suits brought by or against the same; but when he is individually a party, this duty shall be performed by the secretary.

Secretary.

Keep records.

Preserve and file papers and reports.

Countersign orders and register same.

2499. SEC. 53. The secretary shall record all proceedings of the board and of the district meetings in separate books kept for that purpose; shall preserve copies of all reports made to the county superintendent; shall file all papers transmitted to him by other school officers pertaining to the business of the district, and shall countersign all drafts, warrants or orders drawn by the president, and shall keep a register of all orders drawn on the county or district treasurer, showing the number of the order, date, name of the person in whose favor drawn, for what purpose, and the amount; and shall, from time to time, furnish the district treasurer with a transcript of the same. Immediately after the election of the board of directors, as provided by this act, he shall transmit to the county superintendent a statement giving the name and postoffice address of the president, secretary, and treasurer, respectively, of the board of directors, as aforesaid. He shall, between the twentieth (20th) of June and tenth (10th) of July of each year take

Report names to county sup't.

Take census. and keep and record a list, alphabetically arranged, of the names of all persons residing in the district between the ages of six (6) and twenty-one (21) years, and shall deliver a copy of the same to the principal teacher of each school in the district. The census list shall be sworn to as correct
Swear to same. by the person taking the same, and a copy thereof filed with the county superintendent. If the same person is found to be listed in more than one district, he or she shall be counted as belonging to the district where he or she shall or may attend school.

Children temporarily absent. 2500. SEC. 54. All children who may be temporarily absent from their district attending boarding schools or private seminaries, shall be included in the census list so taken, and shall not be taken by the secretary of the district where they may be.

Keep accounts. 2501. SEC. 55. The secretary shall keep an accurate account of the expenses incurred by the district, and shall present the same to the board whenever called upon. He
Give notices. shall give the required notice of all regular and special meetings, as herein authorized. On or before the tenth
Annual report. day of September of each year, he shall make out and file in the office of the county superintendent, a report of the affairs of the district containing:

Items. *First*—The number of persons, male and female, each, in his district, between the ages of six (6) and twenty-one (21) years.

Second—The number of schools, and the branches taught in each.

Third—The number of pupils in each school.

Fourth—The number of teachers employed in each school, and the compensation of each per month.

Fifth—The number of days the school was taught during the year then past, and by whom.

Sixth—The number of pupils enrolled during the year, the average daily attendance, and the average number belonging to the school.

Seventh—The average cost of tuition per month, for each pupil, based on the average number belonging to the school.

Eighth—Text books used in each school.

Ninth—The number of volumes in the library of each school.

Tenth—The aggregate amount paid teachers during the year, and the average monthly pay of teachers.

Eleventh—The number of public school houses, and the estimated value of each.

Twelfth—The amount raised in the district, by tax, for the erection of school houses.

Thirteenth—The amount raised by subscription, or by other means than by tax.

Fourteenth—The amount of special tax levied for the support of schools.

Fifteenth—The amount of money on hand at the beginning of the year then past.

Sixteenth—The amount of money received from all other sources than those herein specified.

Forfeit for failure.

Should the secretary fail to file his report, as above directed, he shall forfeit the sum of one hundred (100) dollars, and shall make good all loss resulting to the district, from such failure.

Render statement to board.

Books always open.

2502. SEC. 56. The secretary shall render a statement of the condition of the finances, as shown by the books, at any time when required by the school board, and his books shall always be open for inspection.

Treasurer's duties.

Custodian of funds.

Keep accounts.

Render financial statement.

Forfeit for failure.

2503. SEC. 57. It shall be the duty of the treasurer to take charge of all moneys received by him, from orders on the county treasurer, and from all other sources, to pay out the same upon the order of the president, countersigned by the secretary; he shall keep an account of the receipts and expenditures thereof, in a book provided for such purpose; he shall render a statement of the finances of the district, as shown by the records of his office, at any time when required by the board. For a failure to perform any of the duties of his office, when directed by the board, he shall be liable on his bond, and shall make good all loss resulting to the district from such failure.

Neglect of duty a misdemeanor.

2504. SEC. 58. No superintendent or district officer shall receive any compensation, who has neglected or refused to perform any duty required by law, and any district officer so neglecting or refusing, when specially directed by a majority of the district board, shall be deemed guilty of a misdemeanor; and it shall be deemed a violation of

law for any person to draw or sign a warrant for the payment of such delinquent officer, and any person so signing a warrant shall be liable in double the amount of such warrant.

TEACHERS.

Shall not teach without certificate.

2505. SEC. 59. No district board shall employ any person to teach in any of the public schools of the state, unless such person shall have a license to teach, issued from the proper county or state authority, and in full force at the date of employment; and any teacher who shall commence teaching in any such school, without such license, shall forfeit all claim to compensation out of the school fund, for the term so teaching without such license.

Forfeit.

Expiration of certificate not to stop school.

And if a teacher's license shall expire by its own limitation within a term of employment, such expiration shall not have the effect to stop the school, or stop the teacher's pay; *provided*, that a teacher whose certificate so expires, shall, at the first regular examination, or before, secure a renewal thereof or a new certificate.

Not dismissed without cause.

No teacher shall be dismissed without due notice, and upon good cause shown; and such teacher shall be entitled to receive pay for services rendered.

Shall notify county superintendent of commencement.

2506. SEC. 60. The principal teacher of every public school in this state shall, at the commencement of such school, notify the county superintendent of such commencement, and at the expiration of each term of service

Furnish sworn report.

furnish a complete report to the school board of his district, verified by affidavits, showing the length of the school

Items of same.

term, in days actually taught, including national holidays that occur during the weekly sessions; the number of teachers employed, male and female; the number of pupils enrolled during the term, distinguishing between males and females; the average daily attendance; the average number belonging; branches pursued and text books used.

Keep register.

Besides such term records and reports the principal teacher shall keep a registry in a suitable book, which shall be furnished by the board, which shall show, alphabetically arranged, males and females separately, the name, age,

Items.

parent or guardian, date of enrollment, number of days attendance during each term, and total number of days

attendance of each pupil during each school year, beginning September first (1st). The affidavit above mentioned may be taken by the president of the school board, and it shall further be the duty of every teacher in a public school to report to the district secretary and also to the county superintendent the average number of pupils belonging to his or her school for the term; *provided*, that in graded schools the subordinate teachers shall make such report to the principal or superintendent of such school, who shall forward to the district secretary and also to the county superintendent an abstract of such reports; and until such reports shall have been filed, and such yearly registry made, the president shall not draw his warrant for the last month's salary of the teacher. The average number belonging shall be determined at the close of each week, as follows: In all cases of absence from school, whether with intention of returning or not, whether the absence be occasioned by sickness or other causes, including suspension of pupils, but excepting only the cases of transfer to some other school in the same system, the pupil's name shall be kept on the roll as belonging for three whole days and dropped uniformly in case he does not return on the seventh half day; but a pupil who recites lessons in school shall be considered as belonging for the day although the lessons may have been studied elsewhere. The average number belonging for the term shall be found by dividing the sum of the weekly averages by the number of weeks in the term. It shall be the duty of each successive teacher to keep the said annual registry, as above specified, for the time that such teacher has charge of the school, and the teacher who shall be teaching at the close of the last term of each school year shall, in the annual report, include all statistics from the school register for the entire school year, notwithstanding any previous report for a part of the year.

Report to secretary and county superintendent.

Assistant's report to principal.

Average number belonging.

How obtained.

Annual report to include statistics for the full year.

SPECIAL DISTRICT MEETINGS.

2507. SEC. 61. In any district of the third class the board of directors may at any time call a special meeting of the electors of such district for any of the purposes specified in section sixty-two (62) of this act, and it shall be

Directors to call in third class districts.

Ten voters may petition.

Notices.

Items.

Twenty days.

their duty to call such meeting, if petitioned so to do by ten (10) legal voters of the district. Notices specifying the time, place and object of such meeting, shall be posted in three (3) public places, one of which shall be at the place of meeting at least twenty (20) days prior to the time of holding such meeting.

Powers of electors.

2508. SEC. 62. The qualified electors of districts of the third class, when assembled at any regular or special meeting, shall have power:

Items.

First—To appoint a chairman and secretary in the absence of the regular officers.

Second—To adjourn from time to time, as occasion may require.

Third—To fix the site for each school house, taking into consideration in doing so the wants and necessities of the people of each portion of the district.

Fourth—To order such tax on taxable property of the district as the meeting shall deem sufficient for any of the following purposes: To pay teachers; to purchase or lease a suitable site for a school house or school houses; to build, rent or purchase a school house or school houses, and to keep in repair and furnish the same with the necessary fuel and appendages; for procuring libraries for the schools, books and stationery for the use of the board and district meetings, and to defray all other contingent expenses of the district.

Fifth—To direct the sale or other disposition to be made of any school house, or the site thereof, and of such other property, real or personal, as may belong to the district, and to direct the manner in which the proceeds arising therefrom shall be applied.

Sixth—To transact generally such business as may tend to promote the cause of education, in accordance with the provisions of this act.

Seventh—To adopt any rules of order for the government of district meetings, not incompatible with the provisions of this act, and to alter and change the same from time to time, as occasion may require.

2509. SEC. 63. The county commissioners shall, at the time of levying the tax for county purposes, cause to be levied a

tax for the support of schools within the county of not less than two (2) mills on the dollar, and not more than ten (10) mills on the dollar of the assessed value of all the taxable property, real and personal, within the county; which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected, except that it shall be receivable only in cash.

County commissioners shall levy tax.

Two to ten mills.

Treasurer shall collect.

2510. SEC. 64. No county clerk or other person who shall make out the tax list or assessment roll of any county, shall omit or neglect to levy said tax of two (2) mills, as aforesaid, by reason of the omission of the board of county commissioners to pass a resolution for that purpose. Failure to levy a tax of at least two (2) mills, as above specified, shall be deemed a violation of the law, and the person or persons through whose neglect or refusal the failure so to levy shall occur, shall forfeit the sum of one hundred (100) dollars each, and be liable for all damages resulting from such neglect or failure.

County clerk must levy with or without order of commissioners.

Forfeit for failure to levy.

2511. SEC. 65. The county treasurer shall, on or before the first day of January, April, July and October, of each year, certify the amount of said tax which shall have been collected, and the amount of any other county school money, then in the county treasury, to the county superintendent, and shall render him a statement of the amount uncollected. The amount unpaid shall be collected at any subsequent time, as delinquent taxes are collected, and shall be certified to the county superintendent as aforesaid. Should the treasurer fail at any time to pay over the tax as herein provided, he shall forfeit the sum of one hundred (100) dollars, and double damages, to be collected on his official bond; suit to be brought by the county superintendent, for the benefit of his county [school fund].

County treasurers to certify amount collected to county superintendent quarterly.

Delinquent taxes

Forfeit and damages.

SPECIAL SCHOOL FUND.

2512. SEC. 66. On or before the day designated by law for the commissioners of each county to levy the requisite taxes for the then ensuing year, the school board in each district of the first and second classes, and the school boards of the districts of the third class that may have voted to raise a special school or building fund, shall certify

School boards to notify county commissioners.

to the county commissioners the number of mills per dollar which it is necessary to levy on the taxable property of the district, to raise the said special fund, and the commissioners shall cause the same to be levied at the same time that other taxes are levied, and the amount of such special tax which shall be assessed to each taxpayer of such district shall be placed in a separate column of the tax book, which shall be headed "Special School Tax." There shall also be a column in said tax book in which shall be designated the number of the school district in which the property is listed. This tax shall be collected in cash only, and placed to the credit of the proper district, as fast as collected, and the amount placed to the credit of each district, shall be reported to the president of such district at the end of every month, and shall be subject to the order of the district board. It is hereby made the duty of the county assessor and county treasurer to so arrange their tax schedules and books as to conform to the above provisions; *provided*, that the county assessor shall list all property, both real and personal, in the school district in which the same may be at the time any school tax may be levied.

To be levied same as other taxes.

Separate column for each district.

Cash only.

Assessor and county treasurer to arrange books

Where property is listed.

2513. SEC. 67. It shall be the duty of the county treasurer to open and keep separate accounts with each school district in his county, and hold the funds of each district, subject to the legal drafts of the president, as provided by section fifty-two (52) of this act.

County treasurer to keep an account with each district.

PENAL FUND.

2514. SEC. 68. All fines, penalties and forfeitures provided by this act may be recovered by action of debt, in the name of the people of the state of Colorado, for the use of the proper school district or county, and shall, when they accrue, belong to the respective districts or counties, in which the same may have been incurred; and the county treasurers, for their counties, are hereby authorized to receive and cause to be placed to the proper credit such forfeitures. Except as otherwise provided by law, all sums of money derived from fines imposed for violation of orders of injunction, mandamus and other like writs or for contempt of court, shall be paid into the school fund of the

Fines under this law.

county wherein the contempt or such violation was committed; and the clear proceeds of all fines collected within the several counties of the state for breach of the penal laws, and all funds arising from the sale of lost goods and estrays, shall be paid over in cash by the person collecting the same, within twenty (20) days after the collection, to the county treasurer of the county in which the same have accrued, and shall be by him credited to the general county school fund. He shall indicate in such entry the source from which such money was derived. Any officer or person collecting or receiving any such fines, forfeitures or other moneys, and refusing and [or] failing to pay over the same, as required by law, shall forfeit double the amount so withheld and interest thereon at the rate of five (5) per cent. per month during the time of so withholding the same; and it shall be a special duty of the county superintendent of schools to supervise and see that the provisions of this section are fully complied with, and report thereupon to the county commissioners semi-annually or oftener, if required by them.

Contempt of court.

Penal fines.

Estrays.

Forfeiture for failure to pay over.

County superintendent to look after fines, etc.

SPECIAL BUILDING FUND.

2515. SEC. 69. A special building fund for building, leasing, purchasing, repairing, enlarging or furnishing school buildings or purchasing grounds, may be raised, levied, assessed and collected, in the same manner as is provided in this act for special school fund and kept separate from all other funds, and as fast as collected shall be subject to the order of the proper district board; *provided*, that it shall not be lawful to reconsider the question of the levy of said tax after the same has been certified to the county commissioners.

How raised.

Kept separate.

Reconsideration

2516. SEC. 70. It shall be deemed illegal for any person or persons to appropriate, or cause to be used, any portion of the state, county, special school or penal fund, for the purpose of building, furnishing or erecting additions to any school house, or for the purchase or improvement of any school house, site or lot; *provided*, that if any portion of the aforesaid school funds remain to the credit of any district after the payment of all expenses necessary to the

What funds may not be used for building.

Balance after ten months school.

support of a public school for a period of ten months in any one year in said district, it shall be lawful for the district board to use such balance for any of the purposes provided for in section fifty (50) of this act.

APPORTIONMENT OF SCHOOL FUND.

First Monday of October.

2517. SEC. 71. On or before the first Monday of October next, after having received the reports from the secretaries of the several districts, as provided to section fifty-five (55) of this act, and annually thereafter, the county superintendent of each county shall estimate what proportion of the general school fund, which may be distributed during the then current year among the districts of his county, shall belong to each district.

Apportioned according to census

2518. SEC. 72. The county superintendent shall apportion the said fund among the districts entitled to the same according to the number of persons of school age, as shown by the census list of the several districts. He shall, after such apportionment is ascertained, proceed as directed in section nineteen (19) of this act.

Forfeiture referred to state superintendent.

2519. SEC. 73. Whenever a school district shall have forfeited or been deprived of the whole or any part of an apportionment, if it can be shown to the satisfaction of the state superintendent of public instruction, that such forfeiture or deprivation was caused by accident, mistake or extraordinary occurrence, he may, upon the application of such district, direct and authorize the county superintendent to make an equitable allowance to such district.

No district entitled to money unless it has a school at least sixty days, holidays included.

2520. SEC. 74. After the first day of September, A. D., 1877, no district shall be entitled to receive, nor shall it receive any portion of the general or county school fund unless there was maintained in such district, during the year next preceding the time of apportionment, a school under the charge of a licensed teacher, or a succession of licensed teachers, for and during sixty (60) school days. All legal and national holidays, and all days not exceeding six that the school may have been suspended by reason of the attendance of teachers upon teachers' institutes, shall be included in the sixty (60) days aforesaid; *provided*, that such holidays and such institutes occurred during the reg-

ular term of the school; *provided, further,* that the provisions of this section shall not apply to a new district until after the lapse of one year from the date of its organization. Not apply to new districts.

SCHOOLS.

2521. SEC. 75. A public school is hereby defined to be a school that derives its support entirely, or in part, from moneys raised by a general state, county or district tax. Public school.

2522. SEC. 76. Every public school, except the high school shall be open for the admission of all children between the ages of six (6) and twenty-one (21) years, residing in that school district during at least three school months in each year, and the school board shall have power to admit adults and children not residing in the district, if they see fit so to do, and to fix the terms of such admission. Open to all children of the district. Children from other districts.

2523. SEC. 77. The public schools of this state shall be taught in the English language, and the boards shall provide to have taught in them the branches specified in section fifteen (15) of this act, and such other branches of learning and other languages as they may deem expedient; and whenever the parents or guardians of twenty or more pupils in attendance at any school shall so demand, it shall be the duty of the board to procure efficient instructors and introduce the German and Spanish, or either language, and gymnastics, as a branch of study, into such school; *provided,* that such demand is made before the teacher or teachers are employed for the ensuing term. School taught in the English language. German and Spanish taught by request.

2524. SEC. 78. The school year shall begin on the first day of September and end on the thirty-first day of August. A school month shall be four weeks, a school week five days, and a school day shall not exceed six hours, excluding the time of intermission at noon. School year. Month. Day.

2525. SEC. 79. A school census is hereby defined to be a census embracing all persons between the ages of six and twenty-one years. School age is hereby defined to be any age over six and under twenty-one years. School census. School age.

TEACHERS' INSTITUTE.

Twenty-five teachers in a judicial district.

Not less than five days.

One hundred dollars annually to each district.

Boards may close schools on account of institute.

2526. SEC. 80. Whenever reasonable assurance shall be given by the county superintendents of two or more counties in any judicial district, to the superintendent of public instruction, that not less than twenty-five teachers in said district desire to assemble for the purpose of holding a teachers' institute, to remain in session not less than five working days, he shall appoint the time and place of said meeting, and give due notice thereof to the county superintendents of all the counties in said district, and for the purpose of defraying the expenses of said institute the said state superintendent is hereby authorized to draw out of any moneys in the state treasury, appropriated to this purpose, a sum not exceeding one hundred (100) dollars annually for one such institute in said judicial district, and shall transmit the same to the county superintendent in whose county the institute shall be held, who shall defray the necessary expenses of the institute, and if any balance remains he shall refund the same into the state treasury within ten days after the close of the institute aforesaid. Whenever any such institute is in session the boards of directors of such schools as may be in session at the time, may close the schools during its sessions, if they deem it advisable, and permit the teachers thereof to attend such institute; and the pay of such teachers while attending the institute shall continue the same as though such schools had not been closed.

APPEALS.

Made within thirty days.

To county superintendent.

2527. SEC. 81. Any person aggrieved by any decision or order of the district board of directors, in matter of law or fact, may, within thirty days after the rendition of such decision, or making of such order, appeal therefrom to the county superintendent of the proper county.

By affidavit.

2528. SEC. 82. The basis of the proceeding shall be an affidavit, filed by the party aggrieved, with the county superintendent, within the time for taking the appeal.

Set forth errors.

2529. SEC. 83. The affidavit shall set forth the errors complained of in a plain and concise manner.

2530. SEC. 84. The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper district, in writing, of the taking of such appeal; and the latter shall, within ten days after being thus notified, file in the office of the county superintendent, a complete transcript of the record and proceedings relating to the decision complained of, which shall be certified to be correct by the secretary.

Notify secretary within five days.

Transcript filed within ten days.

2531. SEC. 85. After the filing of the transcript aforesaid, in his office, he shall notify, in writing, all persons adversely interested, of the time and place where the matter of the appeal will be heard by him.

Notify all parties

2532. SEC. 86. At the time thus fixed for hearing, he shall hear testimony for either party, and for that purpose may administer oaths if necessary, and he shall make such decision as may be just and equitable, which shall be final, unless appealed from, as hereinafter provided.

Hear testimony and make decision.

2533. SEC. 87. An appeal may be taken from the decision of the county superintendent to the state board of education, in the same manner as provided in this act, for taking appeals from the district board to the county superintendent as nearly as applicable, except that the said board shall give thirty days' notice of the appeal to the county superintendent, and the like notice shall be given the adverse party. The decision of said board, or a majority of them, shall be rendered by the president of the board, and such decision, when made, shall be final.

Appeals to state board.

Thirty days notice.

Decision final.

2534. SEC. 88. Nothing in this act shall be so construed as to authorize either the county superintendent or the state board, to render a judgment for money; neither shall they be allowed any other compensation than is allowed by law. All necessary postage must first be paid by the party aggrieved.

No judgment for money rendered.

SCHOOL DISTRICT BONDS.

2535. SEC. 89. On the petition of twenty legal voters of any school district, the secretary of said district shall give notice, not less than twenty days before any regular or special meeting, held under the provisions of this act, that

Notice given on petition of twenty voters.

Vote may be taken at any regular or special meeting.

None are voters but such as have paid school tax.

Not to exceed three per cent. of valuation.

Vote by ballot.

Interest not to exceed twelve per cent.

Redeemable at pleasure of district.

Payable at county treasurer's office, or in New York.

Registered in county recorder's office

County commissioners levy all bond taxes.

the question of contracting a bonded debt, for the purpose of erecting and furnishing school buildings, or purchasing ground, will be submitted to such qualified electors of the district as shall have paid a school tax therein in the year next preceding the said meeting. The electors aforesaid shall first agree, by a majority vote on the amount of indebtedness to be created, if any, (but in no case shall such indebtedness exceed three per cent. of the assessed value of the property in said district at the assessment next preceding the creation of such indebtedness, and in no case shall the aggregate amount of bonded indebtedness of any school district exceed three per cent. of the assessed value of the property of such district,) shall then proceed to vote by ballot "for the bonds" or "against the bonds," and the ballot box for this purpose shall be kept open as provided in section forty-four (44) of this act; and if it appear that a majority of all the votes cast are "for the bonds," the board of directors, as soon as practicable, shall issue coupon bonds of the district bearing interest not exceeding twelve per cent. per annum, payable semi-annually, and redeemable at the pleasure of the district after five years, and payable fifteen years from date; the principal and interest payable at the office of the treasurer of the county in which the said district may be situated, or the interest may be made payable in the city of New York, at the option of the holders thereof, and the cancelled coupons shall be at the disposal of the district board.

2536. SEC. 90. Whenever any school district shall issue bonds under the provisions of this act, all such bonds shall, previous to being negotiable, be presented to the recorder of the county, to be duly registered by him in a book kept for that purpose in his office, noting the school district, amount, time of payment and rate of interest, and all such bonds shall state on their face that they are issued under the provisions of this act.

2537. SEC. 91. Whenever any school district shall issue bonds under the provisions of this act, it shall be the duty of the board of commissioners of the county in which said district may be situated, to levy and assess a special tax on all the taxable property of such district, in amount

sufficient to pay the interest coupons thereon, when the same shall become due according to their tenor and effect, and the county treasurer shall collect the same as other taxes are collected, in cash only, keeping the same separate from other funds received by him; and if there shall be any surplus after paying [the coupons and] the expenses of collecting such special tax, the treasurer shall without delay pass the same to the credit of such school district, and such fund so passed to the credit of the district, shall be subject to the disposal of the board of directors. And after the expiration of five years next after the issue of such bonds, and annually thereafter until the full payment of said bonds, the said county commissioners shall provide by taxation, and shall collect at least ten per centum and not more than twenty per centum of the principal of such bonds, which amount shall be assessed and collected the same as the tax for the payment of the interest coupons, and when collected shall be turned over to the treasurer of such school district, such money to be used only in the payment of such bonds, in manner as follows: The treasurer of such school district, immediately after receiving the money as aforesaid, shall advertise in some newspaper published in his county, if there be any, for four successive weeks, that on a certain day named in the advertisement, he will pay certain of the district bonds, said bonds to be described in the advertisement by number and amount, and the advertisement shall further state that after the day so fixed for payment, the interest on the bonds described as aforesaid, shall cease and determine. The said payment shall be made at the office, and in the presence of the treasurer of the county, who shall cancel the bonds redeemed, and a minute of such cancellation shall be made on the books of the county recorder, after which they shall be at the disposal of the district board. The provisions of this section for levying and collecting taxes, and for the payment of interest coupons, shall be applicable to all school districts that have issued bonds under the provisions of laws of the territory of Colorado.

Surplus to go to district.

Taxes for principal; manner of payment.

At county treasurer's office.

Bonds issued under territorial law.

2538. SEC. 92. In all districts that have issued bonds under the provisions of the laws of the territory of Colorado,

Manner of redeeming bonds issued under territorial law.

the treasurer of the district, immediately after receiving the annual installment of the fund for the redemption of said bonds, as provided in section ninety-one (91), shall go into the market, and at the lowest price for which he can obtain such bonds, shall use such fund in the retiring of such bonds to the extent of such fund; *provided*, that the said treasurer shall not pay more than five per cent. premium on any bonds of his district, and any balance of said funds remaining in the hands of said treasurer shall be invested as nearly as possible in United States bonds or state bonds of Colorado.

Shall not pay over five per cent. premium.

Invest balance in U. S. bonds.

2539. SEC. 93. All United States or state bonds which may come into the hands of any district treasurer, under the provisions of this act, shall be duly recorded in the books of the district, and deposited in the safety vault of some bank within the state, selected by the district board. The interest coupons of said bonds shall be duly collected by the district treasurer, and the proceeds turned over to the county treasurer, to be used in the payment of the interest coupons of the bonds of such district, and the annual tax for the payment of the interest on said district bonds shall be proportionately lessened. Said United States or state bonds shall be sold by the district board at the best market rates, and the proceeds thereof used to redeem the bonds of the district when the same become due, or when they can be bought at not to exceed five per cent. premium.

Bonds deposited in some bank.

Interest appropriated.

Bonds sold.

2540. SEC. 94. No change in the boundary lines of such school district shall release the taxable real estate of the district from assessment and levy of taxes to pay the interest and principal of such bonds, and if there shall be any change of the lines of such school district, so as to leave any portion of the taxable real estate of the district out of the district, which was subject to taxation in the district at the time of the issue of such bonds, the assessment and levy for principal and interest of such bonds shall be made on such property as if it were still within the district, and if there shall be any change of the lines of such school district, so as to annex any taxable real estate, after the issue of such bonds, the real estate so annexed

No change in boundary lines releases any property from bond tax.

Property added to the district liable for tax.

shall thereafter be subject to the assessment and levy for principal and interest of such bonds.

2541. SEC. 95. The treasurer of the county shall receive the same compensation for the collection of such special taxes as he does for other school taxes. Compensation of county treasurer.

2542. SEC. 96. All such bonds so issued shall be signed by the president of the board of directors, and shall have the seal of the district attached, and shall be countersigned by the county treasurer. Bonds sealed and countersigned.

2543. SEC. 97. An act entitled an act concerning school bonds, approved January 29, 1872, and all acts amendatory thereto, also an act entitled, "An act to amend, revise and consolidate the acts relating to public schools," approved February 11, 1876, and all other general laws inconsistent with this act are hereby repealed. Repealing clause.

2544. SEC. 98. Inasmuch as an apportionment of the common school fund will be made to the various school districts within the state on the first of April, A. D. 1877, and such apportionment made under the present law will will work a hardship to many districts, therefore this general assembly is of the opinion that an emergency exists requiring this act to be in force and take effect immediately. Emergency clause.

Approved, March 20, 1877.

CHAPTER XCIII.

SHEEP.

AN ACT TO PROVIDE FOR THE APPOINTMENT OF SHEEP INSPECTORS.

[Session Laws, 1872.]

2545. SECTION 1. The county commissioners shall appoint a sheep inspector, who shall be a citizen of the county for which he is appointed, for each county containing two thousand sheep, who shall hold his office for two years, unless sooner removed; and any inspector may act in an adjoining county having no inspector, on request of the commissioners thereof. Appointment and term of office.

Duties of sheep inspector.

2546. SEC. 2. It shall be the duty of the sheep inspector, upon information by affidavit filed before a justice of the peace, that any flock of sheep within his jurisdiction has the scab or any other malignant contagious disease, upon two days notice in writing to the owner or agent or person in custody of said flock, if owner or agent be absent from the county, to inspect said flock and report in writing the result of his inspection; and if so diseased, once every two weeks thereafter to re-inspect said flock and report in writing the result and treatment, if any, and the result until said disease is reported cured. *Provided*, that in case of the removal of the flock six miles from the range of any other sheep, as hereinafter provided, he shall only make one inspection every three months.

Report to inspector of arrival of flock of sheep into state; inspection in case of failure to report.

2547. SEC. 3. And upon the arrival of any flock of sheep into the state the owner or agent shall immediately report them to the inspector of the county for inspection, and the inspector shall inspect and report as provided in section two; and in case of failure, from any cause of owner or agent to report for inspection, the inspector having knowledge of the arrival shall make an inspection of said flock, and proceed as provided in section two.

Duties of owner or agent of diseased flock.

2548. SEC. 4. The owner or his agent of any flock reported by the inspector to be so diseased shall immediately herd them, so that they cannot range upon or within one mile of any grounds accustomed to be ranged upon by any other sheep, and shall restrain them from passing over or traveling upon or within one mile of any public highway or road, and in case this cannot be done he shall immediately remove said sheep to a locality where they shall not be permitted to range within less than six miles of any other flock of sheep, and said sheep shall continue to be herded under the above restrictions until, upon inspection, they shall be reported free from such disease.

Penalty for violation of this act.

2549. SEC. 5. The owner or his agent or employés of any flock of sheep, requiring or about to be inspected, shall afford the inspector all reasonable facilities for making his inspection; and for every violation of any of the provisions of this act said owner or his agent or his employés shall be fined not less than ten dollars, nor more than three

hundred dollars, and every separate day's offense shall constitute a separate offense, and the written report of an offense, made by an inspector under oath, shall be *prima facie* evidence of the commission of said offense, and any justice of the peace of the county in which the offense is committed shall have jurisdiction thereof, and the inspector shall *ex officio* report all violations of the provisions of this act of which he has knowledge.

Oath and bond of inspector.

2550. SEC. 6. Every inspector before entering upon the duties of his office shall take the oath of office prescribed by law, and shall give bond to the state of Colorado in the sum of one thousand dollars, with good sureties, conditioned that he will faithfully perform the duties of his office; such bond shall be approved by the county clerk, who shall endorse upon every bond he shall approve as follows: "I am acquainted with the sureties herein, and believe them to be worth the amount of the penal sum of the within bond, over and above their just debts and liabilities."

Record of, and suits upon bond.

2551. SEC. 7. Such bond, with the oath endorsed thereon, shall be recorded in the office of the register of deeds for the county in which the inspector shall reside, and may be sued on by any person injured on account of the unfaithful performance of said inspector's duties; *provided*, that no suit shall be so instituted after more than twelve months have elapsed from the time the cause of action accrued.

Record of official acts of inspector.

2552. SEC. 8. Every inspector shall keep a fair and correct record of all his official acts, and, if required, give a certified copy of any record, upon payment of the fees therefor, and in case of inspector's death, resignation or removal, said record shall be deposited with the register of deeds.

Fees of inspector; disposition of fines and penalties recovered.

2553. SEC. 9. The inspector shall receive for his services five dollars per day whilst necessarily employed in inspecting; and for the first inspection an additional fee of one cent for every sheep, when the flock inspected is five hundred or less; and for inspecting larger flocks, five dollars for the first five hundred and one-half cent each for the remainder of said flock, to be paid by the owner or his agent,

and fifty cents for service of notice, and fifty cents for each copy, and two cents per line of ten words for any other official copies; *provided*, that when an inspection is made upon information by affidavit, before a justice of the peace, and the inspector shall report, in substance, "no such disease," the party giving the information shall pay the inspector's fees; and the inspector shall receive ten per cent. of all fines and penalties in cases in which he gives information of the offense, and his interest in the result shall only go to his credibility, and not affect his competency as a witness. Remainder of fines shall be appropriated to the common school fund of the county.

By whom notices to be served.

2554. SEC. 10. The notices herein shall be served by the inspector, or the sheriff, or any constable of the county.

What counties excepted.

2555. SEC. 11. That the counties of Las Animas, Huerfano, Costilla and Conejos are hereby excepted from the provisions of this act.

In what counties inspector to be appointed on petition.

2556. SEC. 12. No sheep inspector shall be appointed by the county commissioners of either of the counties of Pueblo, Douglas, Bent or Arapahoe, until they have been petitioned to make such appointment by the majority of the sheep owners of said counties, respectively.

AN ACT TO PROHIBIT THE HERDING OF SHEEP IN THE NEIGHBORHOOD OF CITIES AND TOWNS, AND TO REPEAL ALL ACTS IN RELATION THERETO.

Be it enacted by the General Assembly of the State of Colorado:

At what distance from city, town or village sheep to be herded.

2557. SECTION 1. No person shall keep or herd sheep to the number of ten (10) or more at or within two (2) miles of any city, town or village in this state; *provided*, this act shall not prevent any one from driving sheep to market or from passing through any city, town or village, with such animals, or from keeping the same in any enclosure, or from herding for threshing purposes in any city, town or village; *provided, further*, that this act shall not apply to any person who owns a stock ranch or farm within the above described limits.

2558. SEC. 2. Whoever shall offend against the prohibitions of this act shall pay a fine of twenty-five dollars for each day in which the offense may be continued, and such fine may be recovered by action of debt in the name of the people, before a justice of the peace or in the district court of the proper county. Penalty for violations of this act.

2559. All acts and parts of acts in conflict with this act are hereby repealed. Repeal.

Approved, March 7, 1877.

CHAPTER XCIV.

STATE GEOLOGIST.

AN ACT TO CREATE AND ESTABLISH THE OFFICE OF STATE GEOLOGIST.

[Session Laws, 1872.]

2560. SECTION 1. That the governor of the state is hereby authorized and empowered to appoint, by and with the advice and consent of the senate, a state geologist, who shall be commissioned by the governor, reside in the state, and hold his office for the term of two years from the date of his appointment. Appointment and term of office.

2561. SEC. 2. No compensation for services, nor for any expenses whatever, shall be paid by the state to or for the said state geologist. No compensation for services.

2562. SEC. 3. The state geologist shall report the result of his surveys and observations, made under and by virtue of the commission provided for in section one of this act, to the governor of the state, to be submitted to the next legislative assembly, on or before the first day of January, A. D. 1874. Report to governor.

CHAPTER XCV.

STENOGRAPHERS.

AN ACT TO AUTHORIZE THE EMPLOYMENT OF STENOGRAPHIC REPORTERS IN THE DISTRICT COURTS.

[Session Laws, 1874.]

Appointment and duties of short hand reporter.

2563. SECTION 1. The judge of each judicial district may appoint a competent short-hand reporter to attend during any term of the court, or any part thereof, or during the trial of any cause or causes. Such reporter shall, on the direction of the court, in any case, take down in short-hand all the testimony, the rulings of the court, the exceptions taken, and oral instructions given, and other proceedings had during the trial of any cause, and in such causes as the court may designate; and in such reasonable time after the trial as the court may appoint, shall write out the same in plain, legible, long-hand writing, and file it, together with the original short-hand writing, with the clerk of the court in which the cause was tried.

Compensation; how to be paid.

2564. SEC. 2. Such reporter shall receive for his services such pay as the judge of the court may direct, to be paid from the treasury of the county wherein the court sits, not exceeding ten dollars per diem, for reducing the testimony to short-hand, and not exceeding twenty cents per folio of one hundred words, for making transcripts in long-hand, when so directed by the court. The compensation to said reporter shall be paid as follows: The per diem allowance by the county in which such suit may be pending, and the allowance for transcript in long-hand shall be paid as other costs of the suit.

CHAPTER XCVI.

STOCK.

AN ACT REGULATING THE BRANDING, HERDING AND CARE OF STOCK.

[Session Laws, 1872.]

2565. SECTION 1. No person shall take up an estray animal, except in the county where he resides, and is a householder, nor unless the same be found in the vicinity of his residence. When any person shall take up an estray, he or she shall, within five days after taking up such estray, make out a written description of such animal, or animals, as the case may be, setting forth all marks and brands apparent and other marks of identity, such as color, age, or size, and present the same to the county clerk of the proper county, who shall endorse thereon the date of presentation of the same, and return one copy to the taker-up, and the other copy he shall place upon record in the estray book. After filing said notice it shall be lawful for said taker-up to herd and take charge of said stock until the same shall be claimed and proved, and taken in charge by the owner thereof, or his duly authorized agent. The county clerk shall be entitled to twenty-five cents from the party presenting the same, for recording each certificate of estray, and five cents per head for each additional number more than one, contained in said certificate; and the taker-up of said estray shall be entitled to twenty-five cents for each original certificate of description, with ten cents per head for each additional number more than one, contained in said certificate, and mileage to and from the clerk's office, at the rate of ten cents per mile.

Duties of persons taking up an estray; fees of county clerk and compensation of taker up.

2566. SEC. 2. Before the owner of any estray so taken up and posted, shall be entitled to the possession of the same, he shall notify the taker-up of the time and place before the most convenient magistrate, county judge or justice of the peace, as the case may be, when and where he will prove his right to said property, and shall procure an order in writing from said magistrate to the taker-up to deliver the same over into the possession of the owner, upon payment to said taker-up of all the costs in the case,

In what manner owner of estray to recover possession.

including the costs of taking up and ranching the said stock, at the rate of fifty cents per head per month; *provided*, that where the taker-up is fully satisfied that said estray or estrays are the property of the claimant, and that he is entitled to the possession of the same, he may, upon payment to him of his legal costs and charges, deliver the same to the claimant, and take his receipt therefor for the stock so delivered; but the taker-up shall be held liable for the value of said stock, if he shall deliver the same to any one not the owner or entitled to the same. At the expiration of twelve months from the date of filing description of any estrays, and before the taker-up or other person not the rightful owner thereof shall gain any title to said estrays, it shall be the duty of the taker-up to file a notice with the county clerk, which shall be placed upon record in the estray book, setting forth a minute description of the estray to be offered, and the time and place, when and where the same will be offered at public sale to the highest bidder for cash in hand, and shall put up a copy of the same at the court house door and in three other conspicuous places in the county, and one at the residence of the taker-up; said notice to be posted up for ten days before the day of sale. The sale shall be at public auction, to the highest bidder for cash in hand, and the proceeds of the same, after deducting all legal costs, fees and charges, shall be paid into the hands of the county treasurer, for the benefit and use of the school fund of the school district in which the said estray stock was taken up. If the said district shall not be organized, then the same shall be paid into the general school fund of the county; *provided*, that no one shall have the right, for twelve months after the appearance of said stock, to advertise any animal which is branded with a brand recorded in the county where the animal is running. Any justice of the peace of the county who is duly satisfied that the provisions of this act have been complied with by the taker-up, in all substantial parts, may, by order under his hand and seal, authorize the sale to be conducted by any constable or disinterested householder of the county, who shall execute and deliver to the purchaser a bill of sale of said stock, setting forth a description of the same and

Delivery of possession without proof of ownership before magistrate; liability of taker up in such case.

Manner of making public sale of estray stock.

Disposition of proceeds of sales

Bill of sale by person conducting sale to vest good title in purchaser.

the price paid, and that the same was estray stock, which certificate shall vest a good and perfect title in the purchaser.

Punishment for concealment of estray or lost goods; effacing or changing, etc. mark or brand, or neglecting to give information of estray animals.

2567. SEC. 3. If any person shall conceal, or attempt to conceal, any estray or lost goods, found or taken up by such person, or shall efface or change, or attempt to efface or change any mark or brand thereon, or carry the same beyond the limits of the county where found, or knowingly permit the same to be done, or shall neglect to notify, or give information of estray animals to the county clerk of his county, every such person so offending shall be deemed guilty of larceny, and may be fined in any sum, at the discretion of the court.

Running at large of certain animals prohibited; penalty for permitting the same. (Amendment 1874.)

2568. SEC. 4. No mustang or other inferior stallion over the age of one year; nor any Texan, Mexican or Cherokee bull, or other inferior bull over the age of one year; nor any Mexican or other inferior ram over the age of two months, shall be permitted to run at large in this state; and no stallion of any kind over the age of one year shall be permitted to run at large in Boulder and Weld counties; nor shall any stallion over the age of one year be permitted to run at large in said state, except with a band of mares not less than ten in number. The owner or person in charge of such animal or animals as are prohibited from running at large by this section, who shall permit such animal or animals to run at large, may be fined for each offense not less than fifty dollars nor more than two hundred dollars. And it shall be lawful for any stock grower to castrate or cause to be castrated any such animal found running at large; *provided*, that if any person shall castrate any stallion, bull or ram, and it shall, on proper evidence before any competent court, be proven, to the satisfaction of said court, that such animal was not of a class of stock prohibited from running at large by this act, said person shall be liable to damages to the amount of treble the value of said animal so castrated and costs of suit; *provided, also*, that for the purposes of this act, any stallion possessing one-quarter of Mustang blood, shall be deemed a Mustang stallion; any bull possessing one-quarter Texan, Mexican, or Cherokee blood, shall be deemed a Texan, Mexican or Cherokee bull, as the case may be; and any ram possessing one-quarter Mexican

Castration of animals running at large; liability in case animal not prohibited.

What counties excepted.

blood, shall be deemed a Mexican ram; *and, provided, further*, that this section shall not take effect and be in force within the counties of Huerfano, Las Animas, Costilla and Conejos.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT PROVIDING FOR THE PAYMENT FOR STOCK KILLED BY RAILROADS OR RAILWAY COMPANIES," APPROVED FEBRUARY 9, 1872, AND TO ENACT OTHER PROVISIONS IN LIEU THEREOF.

Be it enacted by the General Assembly of the State of Colorado:

Amendment of act of 1872.

2569. SECTION 1. That an act entitled "an act providing for the payment for stock killed by railroads or railway companies," approved February 9, 1872, be and the same is hereby amended so as to read as follows:

Liability of railway corporation for damages to owner of animals killed or damaged.

2570. SEC. 2. That every railroad or railway corporation or company operating any line of railroad or railway or any branch thereof, with the limits of this state, which shall damage or kill any horse, mare, gelding, filly, jack, jenny or mule, or any cow, heifer, bull, ox, steer or calf, or any other domestic animal, by running any engine or engines, car or cars, over or against any such animal, shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof.

Affidavit of ownership, and certificate of brand; what payment to be on delivery of to corporation.

2571. SEC. 3. If the owner of the animal or animals so killed, or his or her authorized agent shall make affidavit before some officer authorized to administer oaths, that he or she was the owner or authorized agent of the owner of the recorded brand found upon the animal or animals so damaged or killed, at the time of such killing or damaging, and such person shall, within six months after such killing or damaging, deliver such affidavit to the agent or an officer of such company or corporation, together with a certificate of his or her mark or brand, under official seal of the county clerk of the county in which such person resides, or shall make affidavit that the animal damaged or killed as aforesaid had no recorded mark or brand, and that he or she is the owner of such animal, describing it; and the corporation or company shall pay to such person

delivering such affidavit and certificate, or such affidavit last aforesaid, as follows:—

SCHEDULE.

Texas yearlings	$ 7 00
Texas two (2) years old	12 00
Texas three (3) years old, and over	15 00
American yearlings	10 00
American two (2) years old	18 00
American three (3) years old, and over	25 00
American work cattle	25 00
American sheep, each	2 50
Mexican sheep, each	1 50

All half-blood Texan, Mexican and American cattle shall be counted as Texas cattle, and all three-quarter (¾) blood American cattle shall be considered American cattle. Throughbred cattle and sheep shall be paid for at their cash value. Horses, mules and asses shall be paid for at their cash value. *Provided,* that no railroad company shall at any time be required to pay more than the market value of any animal killed or damaged. In all cases where such railroad company or corporation shall kill any of the stock mentioned in this act, and for which no price or sum is fixed, the owner or agent of such stock shall, after the filing of such affidavit and certificate of brand or affidavit of ownership as aforesaid, select some disinterested freeholder of the county where such killing took place, and shall notify such company or corporation of said selection, and such company or corporation shall within three days thereafter, select some suitable person to act with the person so selected, and the two so selected shall select a third, and the three so selected shall without delay proceed to appraise the value of the stock so killed, a majority of which three appraisers shall be sufficient to determine the same, and shall certify under oath such appraisement to an agent or superintendent of such company or corporation. In case such railroad or corporation shall refuse or neglect to appoint such appraiser, it shall be the duty of the justice of the peace nearest to the place where such stock is so killed, to select three disinterested persons as appraisers, and administer to them an oath to honestly appraise the

Appraisal of value of animal killed.

Proceedings in case railway corporation refuse to appoint.

value of such stock, which appraisers shall without delay appraise and forward to such justice the result of such appraisement; which justice shall within ten (10) days thereafter forward to an agent or superintendent of such railroad or corporation a certificate of the result of such appraisement and all the costs thereof; and such railroad or corporation shall, within thirty (30) days after the receipt of such certificate, pay to the owner of the stock so killed, or his or her agent, the amount of such appraisement together with all the costs as aforesaid; and in all cases where the value of such stock is established by this act, such company or corporation shall pay for such stock within thirty (30) days after the delivery of the affidavit and certificate of ownership of brand or affidavit of ownership of stock, as hereinbefore provided.

Time within which payment for stock killed shall be made.

2572. SEC. 4. Every railroad company shall keep a book, at some station in each county through which their road runs, to be designated by the company, and a notice of the station so designated shall be filed with the county clerks of the counties in which such stations are located; and it is hereby made the duty of the said company to cause to be entered in said book, within fifteen days after the killing of any animal, a description as nearly as may be of such animal, its color, age, marks and brands, and shall keep said book subject to the inspection of persons claiming to have had animals killed. Should any company fail to keep said book, or to file such notice in the manner herein provided, or to enter therein such description of any animal killed for a period of fifteen days thereafter, such company shall be liable to the owner of such animal to an amount twice the full value thereof.

Record of animals killed to be kept by railway corporation at some station in each county.

2573. SEC. 5. If the owner of any stock shall drive any stock on the line of the track of any such company or corporation, with intent to injure such company or corporation, and such stock shall be killed or injured, such owner shall not receive any damage from such railroad company or corporation therefor, and shall be liable to such company or corporation for all damage such company or corporation may suffer in consequence of such act, and shall also be criminally guilty of a felony and liable to indictment there-

Penalty for driving animals on line of railroad with intent to injure corporation; liability for damages to corporation.

for, and on conviction shall be imprisoned in the penitentiary not less than one or more than five years; but nothing herein shall be construed to prevent any person from allowing his or her stock to pasture on the lands adjacent to the line of such railroads, or to drive his stock over or across any such track at suitable times and places.

Disposition of body of animal killed or wounded.

2574. SEC. 6. In every case of the wounding or killing of any such cattle or sheep, the price of the damages for which is fixed by this act, the body of such animal shall belong to such company unless the owner thereof shall elect to take the same in lieu of said damages or part thereof within twenty-four hours after said wounding or killing; but in every other case the railway or railroad company may proceed to take care of and preserve the body of said animal, and it shall be the duty of such company to preserve the hide of such animal for at least thirty (30) days after such killing, such hide or hides to be kept for thirty (30) days for inspection by said railroad company or corporation at the station house nearest to the place where such killing occurred. If any agent or employé of such company shall bury any animal killed or wounded by such company without skinning the same, or shall neglect to keep for thirty (30) days for inspection any hide so taken off as herein provided, such agent or employé or such company shall be fined in any sum not less than one hundred or more than three hundred dollars for each and every animal, to be collected in the name of the people of the state of Colorado before any court of competent jurisdiction, one half of the amount so received to go to the county treasury of the county wherein the recovery is had, and the other half to the person at whose instance the suit was brought.

Penalty for burying animal without skinning and keeping hide for inspection; disposition of fine.

Punishment for making false affidavit of ownership of animal killed.

2575. SEC. 7. Any person falsely making an affidavit of ownership of any animal killed or damaged shall, on conviction thereof, be liable to a fine of not less than five hundred dollars and imprisonment in the penitentiary for not less than one year.

Repeal.

2576. SEC. 8. All other parts of an act providing for the payment for stock killed by railroad or railway com-

panies, approved February 9, 1872, be and the same are hereby repealed.

Approved, March 17, 1877.

AN ACT TO PROVIDE FOR THE BRANDING, HERDING AND CARE OF STOCK, AND TO REPEAL CERTAIN ACTS IN RELATION THERETO.

Be it enacted by the General Assembly of the State of Colorado:

Punishment for driving animals from usual range; what proof requisite.

2577. SECTION 1. Any person or persons not being the owner or owners, or having the right of possession of any animal or animals, who shall be found driving or leading any such animal or animals from its or their usual range, such person or persons may be arrested by any constable, officer, or other person, specially deputed for such purpose, by a judge or justice of the peace, and such person or persons may be taken before any court of competent jurisdiction for examination and trial, and if found guilty, shall be punished as for larceny. In prosecutions for a violation of the provisions of this section, it shall not be necessary, in order to warrant a conviction, for the people to prove that the offense was committed knowingly, or wilfully, or to show an intent, purpose or motive on the part of the accused; but if it shall be shown that the accused had in his possession, or under his control or supervision, any animal so being wrongfully lead or driven from its usual range, as aforesaid, or that the accused assisted in so leading or driving away any such animal without having the right of possession thereof, as aforesaid, such showing shall be sufficient to warrant a conviction, unless the accused shall by testimony in his behalf explain the case made against him in such manner as to show good faith and an innocent purpose on his part.

Liability for damages done by dog.

2578. SEC. 2. Any dog found running, worrying or injuring sheep or cattle, may be killed, and the owner or harborer of such dog, shall be liable for all damages done by it.

2579. SEC. 3. Any person or persons owning or keeping any flock or herd of sheep, any portion of which flock

or herd may be diseased with the scab or any other contagious disease to which sheep are subject, shall be liable in the full amount of damage that may be incurred by other sheep owner or holder by reason of such diseased flock or herd of sheep being moved while in such diseased condition.

Liability for damages caused by moving flock or herd of diseased sheep.

2580. SEC. 4. Animals such as are usually branded may be branded on either side with the owner's brand. All brands shall be recorded in the county where the owners reside. No evidence of ownership by brands shall be permitted in any court in this state unless the brands shall have been recorded as provided in this act. Each drove of cattle or sheep which may be driven into or through any county of this state, shall be plainly branded or marked with one uniform brand or mark. The cattle shall be so branded with the distinguishing ranche or road brand of the owner as to show distinctly in such place or places as the owner may adopt. Sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily, should they become intermixed with other flocks of sheep owned in the state; any such owner or owners, or person in charge of such drove, which may be driven into or through the state, who shall fail to comply with the provisions of this act, shall be fined not less than fifty (50) nor more than three hundred (300) dollars, at the discretion of the court.

Marks and brands not evidence unless recorded; manner of marking or branding droves of cattle or sheep driven into or through any county of this state; penalty for failure to comply with provisions of this act.

2581. SEC. 5. Any person desiring to use any brand, shall make and sign a certificate setting forth a *fac simile*, and description of the brand which he desires to use, and shall file the same for record in the office of the county clerk of the county wherein he resides, which clerk shall record the same in a book kept by him for that purpose, and from and after the filing of such certificate, the person filing the same shall have the exclusive right to use such brand within such county for the purpose aforesaid. And any person or persons so desiring may, in the manner and with like effect, as herein provided, record his brand or mark in any county in this state into which his stock are liable to stray. *Provided*, that such mark or brand has not been heretofore recorded in such county by some other person, and if the

Making and recording of certificate of brand.

Record of similar marks or brands; penalty for.

clerk and recorder of any county shall for any persons record any mark or brand, there being at the time of such recording a similar living mark or brand upon the records of his county, such clerk and recorder shall be liable to pay a fine of not less than twenty (20) nor more than one hundred (100) dollars; *and, provided, further*, when two or more similar marks or brands have been heretofore recorded in any county, the oldest record shall entitle the owner to the exclusive use thereof in such county.

Punishment for marking or branding or defacing or obliterating, etc., mark or brand of animal the property of another.

2582. SEC. 6. If any person shall brand or mark, or cause to be branded or marked, with his, her or their brand, or any other not the recorded brand of the owner, any animal being the property of another, or shall efface, deface or obliterate any brand or mark upon any animal, any such person so offending shall be deemed guilty of larceny, and on conviction thereof, shall be confined in the penitentiary not less than one year, nor more than five, as the court may direct, and shall also be liable to the owner thereof for three times the value of the animal so branded or marked, or upon which the brand or mark shall have been so effaced, defaced or obliterated, and in no case shall the payment of the forfeiture herein mentioned, entitle the person so branding, effacing, defacing or obliterating a brand to the property in the animal so branded or upon which the brand was effaced, defaced or obliterated, but such animal shall be surrendered to the proper owner.

What stock deemed mavoricks; round up and sale; disposition of proceeds of sale; how rightful owner may recover market value.

2583. SEC. 7. All neat stock over the age of one year found running at large in this state without a mother, and upon which there is neither ear mark nor brand, shall be deemed a "mavorick," and may be taken in charge by the captain or foreman of a legal round-up and sold at such times and places and in such manner as shall be determined by the board of commissioners of the county in which they were taken up. The proceeds arising from such sales shall be paid into the county treasury of such county, and if any stock so sold shall within the period of twelve months immediately following such sale, be claimed, identified and proven by the rightful owner, to the satisfaction of the board of county commissioners, it shall be their duty to issue a warrant against such fund in his favor for the market

value of such stock. At the expiration of such twelve months, the balance remaining of such fund shall be for the use and benefit of the cattle growers' association of the county in which such stock was found, if such an association exists in such county; if not, it shall go into the general county fund for the benefit of the county. The captain or foreman of a legal round-up, who shall sell any stock under the provisions of this section, shall within thirty days after such sale pay all the proceeds of the sale into the county treasury, and he shall, as soon as convenient after coming into possession of said "mavoricks," brand them with a brand adopted by the county commissioners for such "mavoricks." Any person purchasing a "mavorick" as aforesaid, shall receive from the captain or foreman of such legal round-up selling the same, a bill of sale signed by him as captain of such round-up, giving a description of the brand aforesaid and price paid. And such bill of sale shall entitle the purchaser to the legal ownership of such stock.

Branding of mavoricks; bills of sale from captain of round up.

2584. SEC. 8. Any captain or foreman of round-up who shall refuse or neglect to deliver to the county treasury all moneys received from the sale of "mavoricks" or unbranded stock sold by him, or who shall give a false or incorrect bill of sale of any stock sold, or shall refuse to give a bill of sale of any stock sold by him, shall be guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned, or both, at the discretion of the court.

Penalty for violations of foregoing section by captain of round up.

2585. SEC. 9. Any person who shall mark or brand, or cause to be marked or branded, or in any way convert to his or her use, or allow the same to be done by his employé or agent in his behalf any animal known as a "mavorick," or any other animal not lawfully in possession of such person, except as otherwise provided in this act, shall be deemed guilty of larceny, and on conviction thereof shall be imprisoned not less than one month or more than one year, as the court may determine.

Unlawful branding of mavorick deemed larceny; how punished

2586. SEC. 10. Any stock grower of this state may adopt and use an ear mark, and such ear mark shall be taken in evidence in connection with the owner's recorded brand, in all suits at law or in equity in which the title to

Ear marks; effect of in evidence; same mark not to be recorded to more than one person.

stock is involved. Such ear mark shall be made by cutting and shaping the ear or ears of the animal so marked, but in no case shall the person so marking an animal cut off more than one-half of the ear so marked; neither shall any one mark by cutting an ear on both sides to a point. No county clerk or recorder shall record the same ear mark to more than one person.

Recorded brand evidence of ownership in all suits; how proof to be made.

2587. SEC. 11. In all suits at law or in equity, or in any criminal proceedings, when the title to any stock is involved, the brand on an animal shall be *prima facie* evidence of the ownership of the person whose brand it may be; *provided*, that such brand has been duly recorded as provided by law. Proof of the right of any person to use such brand, shall be made by a copy of the record of the same, certified to by the county clerk of that county or any county in which the same is recorded under the hand and seal of office of such clerk.

Duties of drovers in case stock of residents intermix with their herds or droves; penalty for failure or neglect.

2588. SEC. 12. When the stock of any resident shall intermix with any drove of animals, it shall be the duty of any drovers or persons in charge to cut out and separate such stock from said drove immediately, except in case of sheep and horses, when they shall be driven to the nearest suitable corral to be separated. Any person, either owner or drover, or otherwise connected with the management of such drove, who shall neglect to comply with the provisions of this section, shall be fined in any sum not exceeding five hundred (500) dollars for every offense, and shall be liable to indictment for larceny.

Driving of stock off from range deemed larceny; how punished.

2589. SEC. 13. When the stock of any person in Colorado shall be driven off its range without the owner's consent, by the drover of any herd or drove, every person engaged as drover of such stock, or otherwise engaged in the care and management thereof, shall be liable to indictment and punishment as for larceny, and shall be liable for damages to the amount of two hundred (200) dollars for each head so driven off, together with all costs accruing in the trial of said cause, and said herd of stock or a sufficient number to cover all damages and costs, shall be held liable for the same.

Duties of owner or person having charge of drove passing through settled counties in preventing the same from mixing with cattle, horses or sheep, or tresspassing on lands of settlers; penalty.

2590. SEC. 14. Any person owning or having charge of any drove of cattle, horses or sheep, who shall drive the same into or through any county of Colorado, of which the owner is not a resident or land owner, and where the land in such county is occupied and improved by settlers and ranchers, it shall be the duty of such owner or person in charge of such cattle, horses or sheep, to prevent the same from mixing with the cattle, horses or sheep, belonging to the actual settlers, and also to prevent said drove of cattle, horses or sheep, from trespassing on such land as may be the property or be in the possession of the actual settler and used by him for the grazing of animals or the growing of hay or other crops, or from doing injury to ditches. If any owner or person in charge of any said drove of stock shall wilfully injure any resident of the state, by driving such drove of stock from the public highway, and herding the same on lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor, and shall be punished by a fine of not less than twenty-five or more than one hundred dollars, at the discretion of the court, and render the owner or person in charge of the drove so trespassing liable for the damages done to such settler.

Penalty for tresspass of hogs or swine running at large.

2591. SEC. 15. No hog or swine shall be permitted to run at large, and the owner of any hog or swine trespassing on the property of any person shall be liable in treble the damages occasioned by such trespass, and a fine of not less than five nor more than ten (10) dollars for each offense.

Round ups; how ordered and regulated.

2592. SEC. 16. The county commissioners of the several counties in this state shall have power or [on] request or ample notice given, to order that cattle be gathered together or rounded up at such time and places as shall be convenient and desirable to stock owners, in their respective counties, under such rules and regulations as the said county commissioners shall provide, and under their care and supervision; *provided*, that such round-up shall not occur oftener than once in each year; *and, provided*, that no round-up shall be held within four miles of the line of any county in which no round-up is authorized by the county commissioners.

Skinning of carcass of sheep or cattle without consent of owner deemed and punished as larceny.

2593. SEC. 17. Any person or persons who may skin or remove from the carcass any part of the skin, hide or pelt of any neat cattle or sheep found dead, without permission from the owner, shall be deemed guilty of larceny, and on conviction thereof shall be punished in the manner provided by law for the punisment of larceny; *provided*, nothing herein shall be deemed to prevent the skinning of animals killed by railroad companies by the employés of any railroad company by which such stock may have been killed.

Cases in which bills of sale shall be given and received for stock sold or otherwise disposed of.

2594. SEC. 18. No person or persons, whether as principal or agent, shall hereafter sell or otherwise dispose of any neat stock, nor shall any person, whether as principal or agent, buy, purchase or otherwise receive any such stock, unless the person or persons so selling or disposing of any such stock shall give, and the person or persons buying, purchasing or otherwise receiving any such stock shall take a bill of sale in writing, of the stock so sold, or disposed of, or so bought, purchased or otherwise received, as the case may be, in any of the following cases, viz:

First—When such stock or any part thereof, is to be shipped from the state, or slaughtered by the purchaser, or when the said stock or any part thereof is to be, by any such purchaser, sold to any other person or persons for shipment or slaughtering, or is to be by any such other person or persons offered for sale for shipment or slaughtering.

Second—When any such stock is to be driven, led, taken or shipped to any market, range or other place more than ten miles distant from the place of delivery thereof, upon any such sale or purchase, or when any such stock is to be led, driven, taken or shipped to any market, range or other place more than ten miles distant from the place where such stock may be herded, or kept, or permitted to range at the time of the sale or purchase thereof, or to any market, range or other place more than ten miles distant from the place where such stock may have been herded, kept, or permitted to range, for any portion of the three months next preceding such sale or purchase.

Third—When any such stock so sold or purchased, is at

the time of such sale or purchase, or for any part of the sixty days next prior thereto, has been running at large upon an unenclosed range; but this provision shall not apply to sales of stock when the persons who sell are selling stock of which they have had actual and personal control and supervision, daily, for the said period of sixty days next prior to the sale thereof, and are rightfully entitled either as principal or agent to sell and dispose of the same.

Penalty for violation of preceding section.

2595. SEC. 19. Any person who shall violate or fail to comply with any of the provisions of the last foregoing section, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than twety-five dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days, nor exceeding six months, or may be punished by both fine and imprisonment, in the discretion of the court.

Penalty for failure to exhibit bill of sale upon reasonable request.

2596. SEC. 20. It shall be the duty of any person who may have purchased or received, or have in his possession any such stock, either for himself or for another, to exhibit, on reasonable request to any person inquiring therefor, the bill of sale of such stock, if in his power do to so, and if not in his power so to do, to state and give the reason therefor, and any person violating or failing to comply with the provisions of this section, shall be deemed guilty and liable to punishment as provided in the next preceding section.

Liberal construction of three preceding sections; what proof necessary to conviction.

2597. SEC. 21. The provisions of the last three sections shall be liberally construed in favor of the people, and, in order to convict of any offense made punishable in any of the said sections, it shall not be necessary for the prosecution to prove knowledge, intent, purpose or motive on the part of the accused, but such knowledge, intent, purpose and motive may be presumed when the wrongful act of the accused has been shown, and shall justify a conviction, unless the testimony in the case shall satisfactorily show the good faith and innocent purpose of the accused.

2598. SEC. 22. Any person who shall steal, embezzle or knowingly kill, sell, drive, lead or ride away, or in any manner deprive the owner of the immediate possession of any neat cattle, horse, mule, sheep, goat, swine or ass, or

Punishment for stealing, killing, driving or leading away stock of another, or of unknown owner, or purchasing from any one not having lawful right to dispose of such stock.

any person who shall steal, embezzle or knowingly kill, sell, drive, lead or ride away, or in any manner apply to his own use any neat cattle, horse, mule, goat, sheep, ass or swine, the owner of which is unknown, or any person who shall knowingly purchase from any one not having the lawful right to sell and dispose of the same, any neat cattle, horse, mule, sheep, swine or ass, shall be deemed guilty of a felony, and on conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment not exceeding six years, or by fine not exceeding five thousand (5,000) dollars, at the discretion of the court.

What violations of this act construed to be grand larceny.

2599. SEC. 23. All cases which are by this act declared to be larceny, and in all cases of felonious taking, stealing, riding, driving, leading and carrying away of any animal or animals herein referred to, the same shall be deemed, and taken to be, and the courts of this state shall construe the same to be grand larceny, subjecting the offender or offenders to be condemned to the penitentiary for a term of not less than one year nor more than ten years, except as otherwise provided for in this act, notwithstanding the value of such animal or animals may be less than twenty dollars.

Selling or trading unbranded stock having no bill of sale or power of attorney, deemed larceny, unless ownership or authority proved by defendant; proof of criminal intent not necessary to conviction.

2600. SEC. 24. Any person or persons who may sell or offer for sale or trade any neat stock upon which such persons have not their recorded mark or brand, or for which the person so offering has neither bill of sale nor power of attorney from the owner of such stock, authorizing such sale, every person so offering shall be deemed guilty of larceny, unless such person upon trial shall establish and prove that he was at the time the actual owner of the stock so sold or traded, or offered for sale or trade, or that he acted by the direction of one shown and proved to be the actual owner of such stock; and in prosecutions for a violation of this section it shall not be necessary, in order to warrant a conviction for the people, to prove motive, intent or purpose on the part of the accused, or that the accused knew that the stock sold or traded, or offered for sale or trade, was so sold, traded or offered in violation hereof, but the fact of such selling, trading or offering for sale or trade contrary to the provisions hereof, when proved, shall be sufficient to authorize a conviction, unless

the accused shall by testimony explain the case made by the people in a manner consistent with good faith and an innocent purpose.

Repeal.

2601. SEC. 25. Chapters fifty-eight and eighty of the revised statutes of Colorado territory, and sections 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 of an act approved February 9, 1872, regulating the branding, herding and care of stock, and all the acts of the year A. D. 1874 relating to stock, except section one of an act approved February 13, 1874, entitled "An act to amend an act entitled an act regulating the branding, herding and care of stock," approved February 9, 1872, are hereby repealed; and all the acts contained in the session laws of the eleventh session of the legislature of said territory, relative to stock, are hereby repealed, except an act approved January 28, 1876, entitled an act to amend sections one and two of an act entitled an act to amend division six, chapter twenty-two of the revised statutes of Colorado territory, entitled "Criminal Code," approved February 11, 1874.

Approved, March 22, 1877.

CHAPTER XCVII.

SUPREME COURT.

[Revised Statutes, Chapter LXXXI]

Adjournments for want of quorum; adjournments to specified day.

2602. SECTION 1. If there shall not be a quorum of the justices of the supreme court present on the first day of any term, the court shall be, and stand adjourned from day to day until a quorum shall attend; and said court may, there being a quorum present, adjourn to any day specified, as may be deemed advisable.

Issue, execution and return of process.

2603. SEC. 2. All process issued out of the supreme court shall bear test in the name of the chief justice, be signed by the clerk of the court, sealed with its seal, and made returnable according to law or the rules and orders of the court, and shall be executed by the officer to whom the same is directed.

Rules of practice, forms of process and regulation of records and proceedings

2604. SEC. 3. The supreme court may, from time to time, institute rules of practice, and prescribe forms of process to be used, and regulations for the keeping of the records and proceedings of the court, not inconsistent with the constitution or laws of this state.

Manner in which opinion shall be given

2605. SEC. 4. The opinion of the justices of the supreme court on any matter pending before it, shall be given in writing and filed with the other papers in the cause; and when the justices are divided in opinion in any case, the final order therein shall state which of the justices agree to it.

Appointment and compensation of reporter.

2606. SEC. 5. The supreme court shall be authorized to appoint a reporter of its decisions; the compensation of such reporter shall be as may be regulated by law.

Continuance of causes undisposed of at any time.

2607. SEC. 6. All matters, suits and causes undisposed of at any term of the supreme court, shall stand continued to the next succeeding term.

Justices prohibited from practicing as attorneys.

2608. SEC. 7. No justice of the supreme court shall practise as an attorney at law, or solicitor in chancery, in any of the courts of the state, nor give advice touching any cause pending or to be brought therein.

AN ACT TO PROVIDE A BAILIFF FOR THE SUPREME COURT, AND TO REGULATE THE COMPENSATION OF SUCH OFFICER.

Be it enacted by the General Assembly of the State of Colorado:

Sheriff to be ministerial officer; attendance in person or by deputy.

2609. SECTION 1. That the sheriff of the county in which the seat of government is or may hereafter be located, shall be the ministerial officer of the supreme court, to attend its sittings in person, or by one deputy or bailiff appointed by him, who shall attend the said court and the judges thereof during every term of said court.

In what case bailiff may be appointed; powers.

2610. SEC. 2. If the sheriff shall neglect to attend the said court or judges, either in person or by his deputy or bailiff, the said court may appoint a bailiff, who shall exercise all the powers of the sheriff in like case during the residue of the term at which he shall be appointed.

2611. SEC. 3. The said sheriff, or the bailiff so appointed, shall receive for each day's attendance two dollars

and fifty cents, which shall be paid to him at the end of each term of the court, upon the certificate of the chief justice, out of any moneys in the state treasury appropriated for that purpose. Compensation of sheriff or bailiff.

2612. SEC. 4. Whereas, there is no officer now authorized by law to open or adjourn the said court, or attend its sittings, and preserve order therein, in the opinion of the general assembly, it is an emergency contemplated by section nineteen of article five of the constitution; therefore, this act shall take effect and be in force from and after its passage. Emergency.

Approved, December 18, 1876.

AN ACT TO PROVIDE FOR THE HOLDING OF TWO OR MORE TERMS OF THE SUPREME COURT OF THE STATE OF COLORADO, ANNUALLY, AND TO MAKE CERTAIN REGULATIONS INCIDENT THERETO.

Be it enacted by the General Assembly of the State of Colorado:

2613. SECTION 1. That there shall be held each year at the seat of government of this state, two regular terms of the supreme court, one to begin on the first Tuesday of April, and the other to begin on the first Tuesday of December. Terms; when and where to be held.

2614. SEC. 2. Special terms of said court may be called under such general rules and regulations as may hereafter be adopted by said court. Special terms.

2615. SEC. 3. All causes now pending or heretofore begun to the February term of said court as heretofore fixed under the laws of the territory of Colorado, shall be deemed and held to be begun and pending to the first term of said court to be held under the provisions of this act. Causes pending under territorial laws.

2616. SEC. 4. All causes pending in the supreme court of the territory of Colorado at the time of the adoption of the state constitution, in which abstracts and briefs have heretofore been filed by the parties respectively, shall be deemed and taken to be submitted to the court as now constituted, and may be taken up and considered by the What causes to be considered before first term to be held under this act.

judges of the said supreme court elected under the constitution before the first term of said court under this act, and may be finally decided and disposed of at said term.

Emergency.

2617. SEC. 5. Inasmuch as there is much business now requiring the attention of said court, and doubt and uncertainty exists as to when the same can receive such attention, and the business of said court be proceeded with, this general assembly is of the opinion that an emergency exists requiring this act to take effect without delay, and therefore this act shall take effect and be in force immediately.

Approved, January 4, 1877.

AN ACT TO PROVIDE A SEAL FOR THE SUPREME COURT OF THE STATE OF COLORADO.

Be it enacted by the General Assembly of the State of Colorado:

Style and device of seal.

2618. SECTION 1. The seal of the supreme court of the state of Colorado shall be one and three-quarter inches in diameter, with a device inscribed thereon, as follows: Upon a ground of white the figure of Justice sitting faced to the left, but with body and face inclined to the front, arms outstretched, and holding in her left hand the scales and in her right hand the sword of justice. Upon the left, and just above the ground, shall appear the rising sun, with golden rays proceeding therefrom. On the right, and resting upon the ground, a shield, having inscribed thereon the coat of arms of the state of Colorado, the upper part of the shield leaning upon the figure of Justice; upon the right of the shield a vine extending from the ground to the top of the shield; above the inscription and around the edge of the seal shall be the words "supreme court;" below the inscription, and around the edge of the seal, shall be the words "state of Colorado," engraved thereon.

Procuring of and payment for seal.

2619. SEC. 2. The secretary of state is hereby authorized and required to procure for the use of the supreme court a seal as described in section one of this act, and the auditor of state is hereby authorized to audit the bill for

the same, and to draw his warrant on the state treasurer for the amount of said audited bill.

2620. SEC. 3. All acts and parts of acts inconsistent with this act are hereby repealed. Repeal.

Approved, February 10, 1877.

AN ACT RELATING TO THE SUPREME COURT LIBRARY.

Be it enacted by the General Assembly of the State of Colorado:

2621. SECTION 1. That hereafter the clerk of the supreme court shall have charge and custody of the books pertaining to the library of the supreme court. Clerk of supreme court designated as librarian.

2622. SEC. 2. It shall be the duty of the said clerk and librarian to keep his office open every day in the year, Sundays and holidays excepted, from nine o'clock A. M. until five o'clock P. M. of each day, so that the public may have access to said library, under such rules and regulations as the supreme court may prescribe. Duties of librarian.

2623. SEC. 3. The state librarian and all other officers who shall hereafter receive, for public use, from any other state or territory, or any officer thereof, or any other person, any book of judicial reports or public statutes, or any other book of laws, shall forthwith cause one copy of such books of statutes, and all of such books of reports, and other books of law, to be deposited in the library of the supreme court, there to remain unless the same may have been sent to some office of the executive department, in which event it shall remain permanently in that office. The librarian of the state shall, forthwith, after the passage of this act, cause one copy of all the public statutes now pertaining to the state library, and all of the several books of judicial reports, and other books of law now pertaining to the library of the state, to be delivered to the clerk of the supreme court, to be deposited in the library of the court, there to remain; *provided*, copies of such books are not already in such court library. Disposition of books of reports and statutes received from other states.

2624. SEC. 4. That an act to amend an act entitled "an act concerning the library of the supreme court," ap-

Repeal.

proved February 13, 1874, and to repeal an act entitled "an act for the payment of rent of supreme court clerk's office," approved February 9, 1872, and all other acts inconsistent with this act are hereby repealed.

Approved, February 17, 1877.

CHAPTER XCVIII.

SURVEYS.

AN ACT RELATING TO SURVEYS.

Be it enacted by the General Assembly of the State of Colorado:

Manner of making subdivisions of sections.

2625. SECTION 1. Whenever a surveyor is required to make a subdivision of a section, as established by the United States survey, he shall proceed as follows: Commencing at either quarter-section corner of the section, he shall proceed to run two lines respectively, to the opposite quarter-section corners, and at the point of their intersection establish a post which shall mark the interior quarter-section corner for that section; any less subdivision shall be made by proceeding in the same manner, all interior posts being established by the point of intersection of lines, bisecting opposite sides; *provided*, that all fractional quarter-sections shall be so divided as to give to occupants of any part thereof, the quantity of land which shall be held to appertain to such part, at any United States land office in this state.

Oath of chainmen or markers.

2626. SEC. 2. County surveyors shall have authority to administer an oath or affirmation to chainmen or markers, acting under them, faithfully and impartially to discharge their duties as chainmen or markers, as the case may be.

Courses and variations; how expressed and noted.

2627. SEC. 3. In all surveys, the courses shall be expressed according to the true meridian; and the variation of the magnetic meridian from the true meridian shall be expressed in the field notes, with the year, month, and day of the same.

2628. SEC. 4. The county commissioners of each county in the state of Colorado are hereby authorized and empow-

ered, whenever they shall deem it expedient and necessary, to employ some competent person, at the expense of the county, to make copies of the original field notes and plats of surveys of all lands surveyed, or hereafter to be surveyed, by the officers appointed by the general government, within their respective counties.

Copies of field notes and plats of government surveys.

2629. SEC. 5. The said commissioners shall procure the necessary books in which such copies shall be made, and stationery for the purpose aforesaid, and shall, by contract or otherwise, fix the compensation of the person employed to procure and make such copies of said field-notes and plats, to be paid out of the county treasury, in the same manner as other expenses are paid.

Compensation of person employed in making such copies.

2630. SEC. 6. The said copies of such field notes and plats, when so made, shall be filed in the office of the county clerk of the proper county, and shall thereafter be a part of the public records of said county; and such records, or copies thereof, certified by the county clerk, shall be evidence in all courts and places.

Such copies to be part of public records of county.

2631. SEC. 7. Whenever the proper location of any monument which marks the corner of any tract or tracts of land, shall be in dispute between the owners of lands of which it is the common monument of boundary, the said monument shall be established in the following manner: The county surveyor of the county in which said corner is located, upon the application of any of the parties in interest, shall immediately give notice in writing to all the parties interested in the establishment of said monument, naming a day when he will be upon the ground and make the necessary surveys to establish the said monument, and if such service of written notice cannot be made upon the owners or agents by reason of non-residence, then in that case such notice shall be published for four consecutive weeks in some newspaper published in the county, or if there be no newspaper published therein, then in some newspaper of general circulation, published nearest such county. The proper notice being given, as above set forth, the county surveyor shall, upon the day named in the said notice, proceed to establish such monument, in accordance with the rules laid down for the subdivision of sections in this act, and with the

Proceedings in case of dispute of proper location of monument.

field-notes of original surveys made by the United States, he shall firmly plant a monument at the point so by him found, shall accurately take and note courses and distances from said point to one or more prominent objects of a permanent nature, if such there be in the vicinity, shall make a plat or map of the survey so by him made, and shall record the same, together with a statement of the whole proceedings, including the application, notice and names of parties in interest, in the records of his office; such monument established as provided in this section shall be held to be the true and legal monument defining the boundary corner as stated in the record of said survey.

Repeal.

2632. SEC. 8. Chapter eighty-two of the revised statutes is hereby repealed.

Emergency.

2633. SEC. 9. Inasmuch as in many instances the monuments designed to mark the corners and establish the correct boundaries of land have been displaced and lost, and in consequence serious embarrassments exist, therefore, it is the opinion of this general assembly that an emergency exists, and that this act shall be in force from and after its passage.

Approved, March 14, 1877.

CHAPTER XCIX.

TOLL ROADS AND BRIDGES.

[Revised Statutes, Chap. LXXXIII.]

Proceedings by county commissioners on complaint that road or bridge is not kept in good repair.

2634. SECTION 1. The county commissioners of the several counties of this state, upon the complaint of not less than twenty-five citizens of either of said counties, to the said commissioners of such county, that any road or bridge or any part thereof, of any incorporated company, situated in, or through either of which said counties the same may pass, representing to the said commissioners that the said incorporation or company are neglecting or refusing to keep such road or bridge in good and proper repair and condition, it shall be the duty of the county commissioners in the county in which such road or bridge is situated, to

proceed forthwith, or within five days, to examine the road or bridge concerning which complaint shall have been made, and ascertain the truth of the facts therein set forth; and if they shall find the matters and things complained of in said petition or complaint to be true, and that said road or bridge is not in proper condition, according to the nature of the ground and the season of the year in which such examination is made, then it shall become the duty of the said county commissioners to give notice in writing to said corporation or company to repair or put said road or bridge in good order or condition in five days, or a reasonable time, and if, in five days, the repairs shall not have been commenced, and in a reasonable time completed, then it shall become the duty of the said county commissioners, and they are hereby authorized, to either take the possession of the said road or bridge, in the name and for the use of the county in which the same is situated, or they may prohibit the said company or corporation from demanding, collecting or receiving any toll for the use of or passage over the same until the said road or bridge shall be put in proper order or condition, and they authorized to do so in writing.

Retention of possession of road or bridge by county until cost of repairs and interest is paid.

2635. SEC. 2. After any road or bridge in either of the aforesaid counties shall be taken as aforesaid, into the possession of either of said counties, it may and shall be the duty of the said county to immediately proceed to put the said road or bridge into proper repair and condition for travel or use, and it may, and is hereby authorized, to keep such possession thereof, and keep it in good and proper repair, and receive the tolls thereof, until the said company or corporation shall fully repay the said county for the repairs so done as aforesaid, after deducting the said tolls so received, together with interest on the money so expended for said repairs, at the rate of two per cent. per month.

Compensation of county commissioners.

2636. SEC. 3. The said county commissioners shall be entitled to receive from the proper counties for their services five dollars per day, for the time actually and necessarily employed in the discharge of said duties, which said sum

shall be charged as the expense of the corporation or company whose property has been taken into custody.

Sale of bridge or road by county, in case of failure to reimburse for repairs.

2637. SEC. 4. If the company or corporation whose property has been so taken into the custody or possession of the county as aforesaid, shall not, within two years, reimburse the said county for the said repairs, then the said county may sell the said property at public auction, to the highest bidder, after giving sixty days' notice of such sale in some newspaper, as sheriffs are required to give notice of sales on execution, and pay any excess of the moneys received from such sales over the said expenditure to the said corporation.

Manner of taking appeal from decision of county commissioners.

2638. SEC. 5. If said company or corporation feel aggrieved at the decision of said county commissioners, they shall have the right to appeal from such decision to the district court, upon filing a good and sufficient bond to be approved by the clerk of the district court, conditioned in like manner as provided in cases of appeals from justices of the peace, and conditioned further for keeping such road in good repair, and for all damages that may accrue to any person or persons for a neglect to keep such road in good repair during the pendency of such appeal; and said clerk shall thereupon issue a summons as in other cases, directed to said county commissioners, and such appeal shall stand for trial before such court, *de novo*, in the same manner as if such suit had been appealed from a justice of the peace.

CHAPTER C.

TOWNS AND CITIES.

AN ACT TO REGULATE THE CANCELLING OF CITY AND TOWN WARRANTS.

[Session Laws, 1876.]

Manner in which city or town warrants are to be received by treasurer or collectors of such city or town.

2639. SECTION 1. When a city or town warrant is received by the treasurer or collector, and there is no money in the treasury to pay the same, he is directed to endorse on it the amount for which it was received and the date thereof, and from that date the warrant is to be regarded

as cancelled and cannot be reissued; but when the warrant amounts to more than is to be paid by the person presenting it, the treasurer or collector shall give him a certificate of the balance due him, which certificate on presentation to the board authorized to audit claims for the city or town, shall entitle the holder to receive a new warrant for the amount specified therein.

AN ACT TO REGULATE THE COMPENSATION OF THE MAYOR, ALDERMEN AND TRUSTEES OF CITIES AND TOWNS.

Be it enacted by the General Assembly of the State of Colorado:

2640. SECTION 1. In cities and towns of not more than five thousand inhabitants, incorporated under the territorial laws of Colorado or by special charter, the mayor and aldermen or the trustees in places having such officers, shall not receive any compensation for services rendered by them as such mayor, aldermen or trustees, unless the question of paying such mayor, president, aldermen or trustees for their services shall first be submitted to the legal voters of such city or town, and unless a majority of those voting thereon shall vote in favor thereof; and all ordinances, resolutions and other acts of the council or board of trustees of any such city or town authorizing or directing the payment of any compensation to any such officer or officers, shall be and remain utterly null and void; *provided*, that nothing herein contained shall apply to any police judge who shall act or officiate as president of any board of aldermen, selectmen or trustees.

Compensation of mayor, aldermen or trustees in cities and towns of not more than five thousand inhabitants; submission of the question to vote.

2641. SEC. 2. Any mayor, alderman or trustee of any city or town who shall take or receive payment for any services by him rendered contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof he shall be fined not less than twenty-five dollars nor more than one hundred dollars. And said fines when collected shall be paid into the general fund of said city or town.

Penalty for mayor, alderman or trustees receiving payment contrary to this act; disposition of fine.

Approved, February 3, 1877.

AN ACT IN RELATION TO MUNICIPAL CORPORATIONS.

ARTICLE I. MANNER OF INCORPORATION.

Be it enacted by the General Assembly of the State of Colorado:

Petition to county court for incorporation; what it shall set forth.

2642. SECTION 1. When the inhabitants of any part of any county not embraced within the limits of any city or incorporated town, shall desire to be organized into a city or incorporated town, they may apply by petition in writing signed by not less than thirty of the qualified electors of the territory, to be embraced in the proposed city or incorporated town, to the county court of the proper county; which petition shall describe the territory proposed to be embraced in such city or incorporated town, and shall have annexed thereto an accurate map or plat thereof, and state the name proposed for such city or incorporated town, and shall be accompanied with satifactory proofs of the number of inhabitants within the territory embraced in said limits.

Appointment of commissioners by the court; calling of election.

2643. SEC. 2. When such petition shall be presented, the court shall forthwith appoint five commissioners, who shall at once call an election of all the qualified electors residing within the territory embraced within said limits as described and platted, to be held at some convenient place within said limits, the notice for which shall be given by publication in some newspaper published within said limits, if any there be, for three successive weeks, and by posting notices in five public places within said limits. If there be no newspaper published within said limits, then such notice shall be given by posting notices in eight public places within the same; said posting and the first publication to be not less than three weeks preceding such election. Such notice shall specify the place and time of such election; it shall contain a description of the limits of said proposed town or city, and state that a description and plat thereof are on file in the office of the clerk of the county court. Said commissioners shall act as judges and clerks of the election, and shall qualify as required by law for judges and clerks of county elections, and shall report the result of

the ballot to the court aforesaid. The ballots used at said election shall be "for incorporation," or "against incorporation."

Notice of result of election; how to be published.

2644. SEC. 3. If a majority of the ballots cast at such election be in favor of such incorporation, the clerk of the county court shall immediately on the return of the commissioners being filed in his office, give notice of the result by publication in a newspaper, or if no newspaper be published in the county, by posting in five public places within the limits of the proposed city or town; and in such notice he shall designate to which of the classes of incorporation hereinafter prescribed, such city or town shall belong. A copy of the notice, with proper proof of its publication shall be filed with the papers, and a certified copy of all papers and record entries relating to the matter on file in the clerk's office, shall be filed in the recorder's office of the county, and in the office of the secretary of state.

Completion of incorporation.

2645. SEC. 4. When certified copies of the papers and record entries are made and filed as required by the preceding section, and officers are elected and qualified for such city or town as hereinafter provided, the incorporation thereof shall be complete; whereof notice shall be taken in all judicial proceedings.

First election of officers of city or town.

2646. SEC. 5. When the incorporation of such city or town is completed, the commissioners mentioned in section two of this act, shall give notice, for two consecutive weeks, of the time and place of holding the first election of officers therefor by publication in a newspaper, or if none be published within the limits of such city or town, by posting in five public places within the limits of the same. At such election the qualified electors of such city or town residing within the limits of such city or town, shall choose officers therefor, to hold until the first annual election of officers according to its grade, as hereinafter in this act prescribed. Said commissioners shall act as judges and clerks of the election, and otherwise it shall be conducted, and the officers elected thereat shall be qualified, in the manner prescribed by law for the election and qualification of precinct officers.

Fee title to avenues, streets, alleys, etc., to vest in city or town

2647. SEC. 6. All avenues, streets, alleys, parks, and other places designated or described as for public use on the map or plat of any city or town, or of any addition made to such city or town, shall be deemed to be public property, and the fee thereof be vested in such city or town.

ARTICLE II. CONTIGUOUS TERRITORY ANNEXED.

Manner of annexation of additions laid out and surveyed as such.

2648. SEC. 7. Whenever any territory shall be laid out and surveyed as an addition to any city or town organized under this act, such territory shall, upon the filing of the map or plat thereof in the office of the county clerk and recorder of the county in which said territory may be situate, and another such map or plat with the clerk or recorder of the city or town to which it is desired to annex such territory, become a part of said city or town, and be included within the limits and jurisdiction thereof; *provided*, that no map or plat of such addition shall be filed for record with said clerk and recorder until the same has been by the owner or owners of such contemplated addition be submitted to the city council or board of trustees of said city or town, and approved by three-fourths of the members elected thereto, and no map or plat of such addition shall be approved by said council or trustees unless the proposed streets and alleys therein are in conformity, as to courses and angles, with the streets and alleys of adjoining portions of said city or town, nor unless such map or plat shall show the topography of such territory as to bluffs, streams, ditches, ravines, etc., nor until all taxes then assessed against said territory are paid, and if the said territory shall have previously been sold for taxes and not redeemed therefrom, the owner or owners thereof shall first redeem the said land from such tax sale; *provided*, that the tax deed has not issued thereon.

2649. SEC. 8. When any municipal corporation shall desire to annex any contiguons territory thereto, not embraced within the limits of any city or town, it shall be

lawful for the trustees or council of the corporation, by an ordinance passed for that purpose at least one month before the regular annual election, to submit the question of annexation to the qualified electors of such corporation; and if a majority of the electors of the corporation voting on the question shall vote in favor of such annexation, the council or trustees of such corporation shall present to the county court a petition praying for such annexation, which petition shall describe the territory proposed to be annexed to such municipal corporation, and have attached thereto an accurate map or plat thereof, and like proceedings shall be had upon said petition as are provided in sections two and three of this act so far as the same may be applicable; and if the result of the election be favorable to the proposed annexation the same record shall be made as provided in said sections, and thereupon the said contiguous territory proposed to be annexed shall be in law deemed and taken to be included in and shall be a part of said municipal corporation, and the inhabitants thereof shall in all respects be citizens thereafter of the said municipal corporation.

Manner of annexation of contiguous territory; submission of question to vote, and petition to county court.

2650. SEC. 9. When any incorporated city shall desire to annex to such corporation any abutting and contiguous territory thereto, which is not embraced within the limits of any city, and which territory has been laid out in lots or parcels containing four acres or less, the council of such corporation may present to the county court of the county in which such city is situate, a petition setting forth the facts and describing the territory that is desired to be annexed, and that the same has been laid out as above mentioned, together with the names of each owner of any portion of such territory, without describing at length, if there is more than one such owner, the particular portion of such territory owned by each, which petition shall have attached thereto a map or plat of such territory. A notice of the filing of such petition shall be served by publication in one daily or weekly newspaper published in such city or town, or if no such newspaper be published therein then by posting in five public places in the territory, outside of said city, for the period of four weeks; and the corporation shall be plaintiff and said owners defendants, and issues joined and

Annexation of contiguous territory which has been laid out in lots of four acres or less; what petition to county court shall set forth.

Trial of cause on petition.

the cause tried in the ordinary manner as far as applicable, except that no judgment for costs shall be rendered against any defendant who does not make any defense. If the court find the allegations of the petition to be true, and that justice and equity require that said territory or any part thereof should be annexed to such corporation, a decree shall be entered accordingly, and from the time of entering such decree the territory therein described shall be included in and become a part of such corporation. The powers conferred under the provisions of this section shall also apply to cities acting under special charters.

Application to cities acting under special charters.

Annexation of one incorporated city or town to another; submission of the question to vote.

2651. SEC. 10. When any city or incorporated town shall desire to be annexed to another and contiguous city or incorporated town, the council or trustees of each of such cities or towns shall appoint three commissioners to arrange and report to such council or trustees respectively the terms and conditions on which the proposed annexation can be made; and if the council or trustees of each of such cities or towns approve of the terms and conditions proposed they shall, by proper ordinance, so declare; and thereupon the council or trustees of each of such cities or towns, by ordinance passed at least one month prior to the general annual election therein, may submit the question of such annexation, upon the said terms and conditions so proposed, to the electors of their respective cities or towns, and if a majority of the electors of each vote in favor of such annexation the council or trustees of each shall, by proper ordinance, so declare; and a certified copy of the whole proceedings for annexation of the city or town to be annexed being filed with the clerk or recorder of the city or town to which the annexation is made, the latter shall file with the secretary of state, and in the recorder's office of the county, a certified copy of all proceedings had by both of such cities or towns in the matter of such annexation.

Completion of annexation.

2652. SEC. 11. When certified copies of the proceedings for annexation are filed as contemplated in the preceding section, the annexation shall be deemed complete, and the city or town to which the annexation is made shall have power to pass such ordinances, not inconsistent with law, as will carry into effect the terms of such an-

nexation; and thereafter the city or town annexed shall be governed as part of the city or town to which annexation of it is made; *provided*, that such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or towns, and that they may be enforced the same as if no such annexation had taken place.

ARTICLE III. GENERAL POWERS.

Rights and privileges of incorporated cities and towns.

2653. SEC. 12. Cities and towns organized as provided in this chapter, shall be bodies politic and corporate under such name and style as they may select at the time of their organization, and may sue or be sued; contract or be contracted with; acquire and hold property, real and personal; have a common seal which they may change and alter at pleasure, and have such other privileges as are incident to corporations of like character or degree, not inconsistent with the laws of the state.

General powers and restrictions.

2654. SEC. 13. All municipal corporations, organized under this act, shall have the general powers and privileges, and be subjected to the rules and restrictions granted and provided in the sections of this act.

OF THE POWERS OF THE CITY COUNCIL AND BOARD OF TRUSTEES.

Powers of city council or boards of trustees.

2655. SEC. 14. The city council and board of trustees in towns shall have the following powers:—

First—To control the finances and property of the corporation.

Second—To appropriate money for corporate purposes only, and provide for payment of debts and expenses of the corporation.

Third—To levy and collect taxes for general and special purposes on real and personal property.

Fourth—To fix the amount, terms and manner of issuing and revoking licenses.

Fifth—To erect all needful buildings for the use of the city or town.

Sixth—To contract an indebtedness on behalf of the city, and upon the credit thereof, by borrowing money or issuing the bonds of the city or town, for the following purposes, to

For what purposes borrowing of money or issuing of bonds authorized.

wit: For the purpose of erecting public buildings; for the purpose of constructing sewers for the city or town; for the purpose of the purchase or construction of water works for fire and domestic purposes; for the purpose of the construction or purchase of a canal or canals, or some suitable system for supplying water for irrigation in the city or town; for the purpose of the construction or purchase of gas works for manufacturing illuminating gas; and for the purpose of supplying a temporary deficiency in the revenue for defraying the current expenses of the city or town. The total amount of indebtedness for all purposes shall not at any time exceed three per centum of the total assessed valuation of the taxable property in the city or town—except such debt as may be incurred in supplying the city or town with water and water works—and no loan for any purpose shall be made, except it be by an ordinance which shall be irrepealable until the indebtedness therein provided for shall be fully paid, specifying the purposes to which the funds to be raised shall be applied, and providing for the levying of a tax not exceeding, in total amount for the entire indebtedness of the city or town—except such debt as may be incurred in supplying the city or town with water and water works—twelve mills upon each dollar valuation of the taxable property within the city or town, sufficient to pay the annual interest and extinguish the principal of such debt within the time limited for the debt to run, which shall not be less than ten years nor more than fifteen years, and providing that said tax, when collected, shall only be applied to the purposes in said ordinances specified, until the indebtedness shall be paid and discharged; but no such debt shall be created, except for supplying the city or town with water, unless the question of incurring the same shall, at a regular election of officers for the city, be submitted to a vote of such qualified electors of the city or town as shall, in the year next preceding, have paid a property tax therein, and a majority of those voting upon the question, by ballot deposited in a separate ballot box, shall vote in favor of creating such debt.

Limitation of total amount of indebtedness; what the ordinance creating such indebtedness shall specify and provide.

Submission of question of incurring debt to vote.

Seventh—First; to lay out, establish, open, alter, widen, extend, grade, pave or otherwise improve streets, alleys,

avenues, sidewalks, parks and public grounds, and vacate the same, and to direct and regulate the planting of ornamental and shade trees in such streets, avenues and public grounds; second, to plant trees upon the same; third, to regulate the use of the same; fourth, to prevent and remove encroachments or obstructions upon the same; fifth, to provide for the lighting of the same; sixth, to provide for the cleansing of the same; seventh, to regulate the openings therein for the laying out of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas lights; *provided, however*, that any company heretofore organized under the general laws of this state, or any association of persons organized, or which may be hereafter organized, for the purpose of manufacturing illuminating gas to supply cities or towns or the inhabitants thereof with the same, shall have the *right by consent* of the city council or town trustees, but not without such consent, (subject to existing rights,) to erect gas factories and lay down pipes in the streets or alleys of any city or town in this state, subject to such regulations as any such city or town may, by ordinance, impose; eighth, to regulate the use of sidewalks along the streets and alleys, and all structures thereunder, and to require the owner or occupant of any premises to keep the sidewalks, or along the same, free from snow and other obstructions; ninth, to regulate and prevent the throwing or depositing of ashes, garbage or any offensive matter in, and to prevent injury to, any street, avenue, alley or public ground; tenth, to provide for and regulate crosswalks, curbs and gutters; eleventh, to regulate and prevent the use of streets, sidewalks and public grounds for signs, sign posts, awnings, awning posts, telegraph poles, horse troughs, posting hand-bills and advertisements; twelfth, to regulate and prohibit the exhibition or carrying of banners, placards, advertisements or hand-bills in the streets or public grounds, or upon the sidewalks; thirteenth, to regulate and prevent the flying of flags, banners or signs across the streets or from houses; fourteenth, to regulate traffic and sales upon the streets, sidewalks and public places; fifteenth, to regulate the speed of horses and other animals, vehicles, cars and locomotives within the limits of the corporation;

Powers in relation to streets, alleys, etc.

sixteenth, to regulate the numbering of houses and lots; seventeenth, to name and change the name of any street, avenue, alley or other public place; eighteenth, to license, regulate and control the laying of railroad tracks, to provide for and change the location, grade and crossing of any railroad, and to control, regulate and prohibit the use of steam engines and locomotives propelled by steam power within the corporate limits; nineteenth, to require railroad companies to fence their respective railroads, or any portion of the same, and to construct cattle guards at crossings of streets and public roads, and keep the same in repair within the limits of the corporation; twentieth, to require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads; twenty-first, to compel such railroads to raise or lower their railroad tracks to conform to any grade which may, at any time, be established by such city or town, and when such tracks run lengthwise of any street, alley or highway, to keep their tracks on a level with the street surface, and so that such tracks may be crossed at any place on such street, alley or highway.

Railroads.

Eighth—To compel and require railroad companies to make and keep open, and to keep in repair ditches, drains, sewers and culverts along and under their railroad tracks, so that filthy or stagnant pools of water cannot stand on their grounds or right of way, and so that the natural drainage of adjacent property shall not be impeded.

Railway tracks.

Ninth—To construct and keep in repair bridges, viaducts and tunnels, and to regulate the use thereof.

Bridges and culverts.

Tenth—To construct and keep in repair culverts, drains, sewers and cesspools, and to regulate the use thereof.

Eleventh—To deepen, widen, dock, cover, wall, alter or change the channel of water courses.

Water courses.

Twelfth—To provide for the cleansing and purification of waters, water courses and canals, and the draining or filling of ponds on private property, whenever necessary to prevent or abate nuisances.

Thirteenth—To license, tax, regulate, suppress and prohibit hucksters, peddlers, pawn-brokers, keepers of ordi-

Licenses.

naries, theatrical and other exhibitions, shows and amusements, and to revoke such license at pleasure.

Fourteenth—To license, tax and regulate hackmen, omnibus drivers, carters, cabmen, porters, expressmen, and all others pursuing like occupations, and to prescribe the compensation.

Fifteenth—To license, regulate, tax and restrain runners for stages, cars, public houses, or other things or persons.

Sixteenth—To license, regulate, tax or prohibit and suppress billiard, bagatelle, pigeon hole, or any other tables or implements kept or used for a similar purpose in any place of public resort, and pin alleys and ball alleys.

Seventeenth—To suppress bawdy and disorderly houses, houses of ill-fame or assignation, within the limits of the city or town, or within three miles beyond, except where the boundaries of two cities or towns adjoin, the outer boundaries of the city or town; and also to suppress gaming and gambling houses, lotteries and fraudulent devices and practices, for the purpose of gaining or obtaining money or property, and to prohibit the sale or exhibition of obscene or immoral publications, prints, pictures or illustrations. Suppression of houses of ill-fame, gambling houses, etc.

Eighteenth—To have the exclusive right to license, regulate or prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor within the limits of the city or town, or within one mile beyond the outer boundaries thereof, except where the boundaries of two cities or towns adjoin, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such license; *provided*, that the city council in cities, or board of trustees in towns, may grant permits to druggist for the sale of liquor for medicinal, mechanical, sacramental and chemical purposes only, subject to forfeiture, and under such restrictions and regulations as may be provided by ordinance; *provided, further*, that in granting licenses, such corporate authorities shall comply with whatever general law of the state may be in force relative to the granting of licenses. Sale of liquors.

Nineteenth—And the city council in cities, and board of trustees in towns, shall also have the power to forbid and

punish the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor to any minor, or apprentice, or insane, idiotic, or distracted person, habitual drunkard, or person intoxicated.

Markets and market-houses.

Twentieth—To establish markets and market houses, and provide for the regulation and use thereof.

Twenty-first—To regulate the sale of meats, poultry, fish, butter, cheese, lard, vegetables and all other provisions, and to provide for place and manner of selling the same.

Twenty-second—To regulate the sale of bread in the city or town, prescribe the weight and quality of the bread in the loaf.

Twenty-third—To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meal, and other provisions.

Weights and measurements.

Twenty-fourth—To regulate the inspection, weighing, and measuring of brick, lumber, fire wood, coal, hay, and any article of merchandise.

Twenty-fifth—To provide for the inspection and sealing of weights and measures.

Twenty-sixth—To enforce the keeping and use of proper weights and measures by vendors.

Vaults, sewers, gutters, etc.

Twenty-seventh—To regulate the construction, repairs, and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.

Twenty-eighth—To license, regulate or prohibit places of amusement.

Twenty-ninth—To prevent intoxication, fighting, quarreling, dog fights, cock fights and all disorderly conduct.

Thirtieth—To regulate partition fences and party walls.

Construction of buildings.

Thirty-first—To prescribe the thickness, strength and manner of constructing stone, brick and other buildings, and the construction of fire escapes therein.

Fire limits.

Thirty-second—The city council or board of trustees, in towns, for the purpose of guarding against the calamities of fire, shall have power to prescribe the limits within which wooden buildings shall not be erected or removed into from without said limits or placed or repaired without permission, and to direct that all and any buildings within the fire limits when the same shall have been damaged by fire,

decay, or otherwise, to the extent of fifty per cent. of the value, shall be torn down or removed, and to prescribe the manner of ascertaining such damage.

Thirty-third—First, to prevent the dangerous construction and condition of chimneys, fire places, hearths, stoves, stove pipes, ovens and apparatus used in and about any manufactory, and to cause the same to be removed or placed in a safe condition when considered dangerous; second, to regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires; third, to prevent the deposit of ashes in unsafe places and to cause all such buildings and enclosures as may be in a dangerous state to be put in a safe condition.

Thirty-fourth—To erect engine houses, and provide fire engines, hose, hose carts, hooks and ladders, and other implements for the extinguishment of fires, and provide for the use and management of the same by voluntary fire companies or otherwise. Fire engines and fire companies.

Thirty-fifth—To regulate and prevent storage and transportation of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitro-glycerine, petroleum, or any of the products thereof, and other combustible or explosive material, and the use of lights in stables, shops, and other places, and the building of bonfires. Also, to regulate and restrain the use of fire-works, fire-crackers, torpedoes, roman candles, sky-rockets, and other pyrotechnic displays. Storage and transportation of combustible or explosive materials.

Thirty-sixth—To regulate the police of the city or town, and pass and enforce all necessary police ordinances. Police.

Thirty-seventh—To provide for the inspection of steam boilers.

Thirty-eighth—To prescribe the duties and powers of a superintendent or chief of police, policemen and watchmen.

Thirty-ninth—To establish and erect calabooses, bridewells, houses of correction, and reform schools and workhouses for the reformation and confinement of vagrants, idle and disorderly persons and persons convicted of violating any city or town ordinance, and make rules and regulations for the government of the same, and appoint necessary keepers and assistants.

Fortieth—To use the county jail for the confinement or

punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners.

Forty-first—To provide by ordinance in regard to the relation between all the officers and employés of the corporation in respect to each other, the corporation and the people.

Forty-second—To prevent and suppress riots, routs, affrays, noises, disturbances, disorderly assemblies in any public or private place.

Forty-third—To prohibit and punish cruelty to animals.

Forty-fourth—To restrain and punish vagrants, mendicants and prostitutes.

Sanitary regulations.

Forty-fifth—To declare what shall be a nuisance and to abate the same, and to impose fines upon parties who may create, continue or suffer nuisances to exist.

Forty-sixth—To appoint a board of health and prescribe its powers and duties.

Forty-seventh—To erect and establish hospitals and medical dispensaries, and control and regulate the same.

Forty-eighth—To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

Cemeteries.

Forty-ninth—To establish and regulate cemeteries within or without the corporation, and acquire lands therefor, by purchase or otherwise, and cause cemeteries to be removed and prohibit their establishment within one mile of the corporation.

Running at large of animals.

Fiftieth—To regulate, restrain and prohibit the running at large of horses, cattle, swine, sheep, goats, geese and dogs, and to impose a license fee upon dogs.

Packing houses, etc.

Fifty-first—To direct the location and regulate the management and construction of packing houses, renderies, tallow candleries, bone factories, soap factories and tanneries, within the limits of the city or town or within the distance of one mile without the city or town limits.

Breweries, etc.

Fifty-second—To direct the location and regulate the use and construction of breweries, distilleries, livery stables, blacksmith shops and founderies, within the limits of the city or town.

Fifty-third—To prohibit any offensive and unwholesome business or establishment within, or within one mile of the limits of the corporation. Unwholesome business or establishments.

Fifty-fourth—To compel the owner of any grocery, cellar, soap or tallow candlery, tannery, stable, pig sty, privy or sewer, or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.

Fifty-fifth—The city council or trustees of a town shall have power to provide for the taking of the city or town census, but no city or town census shall be taken by authority of the council or trustees oftener than once between the years prescribed by law for census to be taken. Census.

Fifty-sixth—To provide for the erection and care of all public buildings necessary for the use of the city or town. Public buildings.

Fifty-seventh—To establish within the corporate limits all toll bridges, ferries, and license and regulate the same, and from time to time fix tolls thereon.

Fifty-eighth—To authorize the construction of mills and mill races, irrigating or mining ditches and feeders, on, through or across the streets of the city or town, at such places and under such restrictions as they shall deem proper. Mills and mill races.

Fifty-ninth—The city council or board of trustees shall have power by condemnation or otherwise to extend any street, alley or highway, over or across, or to construct any sewer under or through any railroad track, right of way or land of any railroad company, within the corporate limits, but where no compensation is made to such railroad company, the city shall restore such railroad track, right of way or land to its former state, or in a sufficient manner not to have inpaired its usefulness. Condemnation of lands.

Sixtieth—The city council or board of trustees shall have no power to grant the use of, or the right to lay down any railroad track in any street of the city or town, to any steam or horse railroad company, except upon the written consent of the owners of the land representing more than one-half of the frontage of the street, or so much thereof as is sought to be used for railroad purposes. Right of way through streets.

Sixty-first—To tax, license and regulate auctioneers, dis-

Licensing of auctioneers, etc.

tillers, brewers, lumber yards, livery stables, public scales, money changers, and brokers; *provided*, that the exercise of their powers shall not interfere with sales made by sheriffs, constables, tax collectors, coroners, marshals, executors, guardians, assignees of insolvent debtors or bankrupts, or any other person required by law to sell real or personal property at auction.

Street annoyances.

Sixty-second—To prevent and regulate the rolling of hoops, playing of ball, flying of kites or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams or horses.

Lumber yards.

Sixty-third—To regulate and prohibit the keeping of any lumber yard, and the placing, or piling, or selling any lumber, timber, wood, or other combustible material within the fire limits of the city or town, and regulate the storage of hay or other combustible material at any place within the limits of the city or town.

Stationery and supplies.

Sixty-fourth—To provide by ordinance that all the paper, printing, stationery, blanks, fuel and all the supplies needed for the use of the city or town shall be furnished by contract let to the lowest bidder.

Second-hand and junk stores.

Sixty-fifth—To tax, license and regulate second-hand and junk stores and to forbid their purchasing or receiving from minors without the written consent of their parents or guardians any article whatsoever, and compel a record of purchases to be kept and subject at all times to the inspection of the police.

Limitation of fines and imprisonment.

Sixty-sixth—To pass all ordinances, rules, and make all regulations proper or necessary to carry into effect the powers granted to cities or towns, with such fines and penalties as the council or board of trustees shall deem proper; *provided*, no fine or penalty shall exceed three hundred (300) dollars, and no imprisonment shall exceed ninety days for one offense.

Water works and gas works.

Sixty-seventh—They shall have power to erect water works or gas works, or to authorize the erection of the same by others; but no such works shall be erected or authorized until a majority of the voters of the city or town

voting on the question at a general or special election by vote approve the same.

Sixty-eighth—They shall have power to construct or authorize the construction of such water works, without their limits, and for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works, and all reservoirs, streams, trenches, pipes and drains, used in and necessary for the construction, maintenance and operation of the same, and over the stream or source from which the water is taken, for five miles above the point from which it is taken; and to enact all ordinances and regulations necessary to carry the power herein conferred into effect.

Extent of jurisdiction over water works.

Sixty-ninth—When the right to build and operate such water or gas works is granted to private individuals or incorporated companies by said cities and towns, they may make such grant to inure for a term of not more than twenty-five years, and authorize such individuals or company to charge and collect from each person supplied by them with water or gas, such water or gas rent as may be agreed upon between said person or corporation so building said works and said city or town; and such cities or towns are authorized and empowered to enter into a contract with the individual or company constructing said works, to supply said city or town with water for fire purposes, and for such other purposes as may be necessary for the health and safety thereof, and also with gas, and to pay therefor such sum or sums as may be agreed upon between said contracting parties.

Granting of rights to build and operate water or gas works.

Seventieth—Said cities or towns are hereby authorized to condemn and appropriate so much private property as shall be necessary for the construction and operation of said water works or gas works, in such manner as is, or may be prescribed by law.

Seventy-first—All cities and incorporated towns constructing such water or gas works, are authorized to assess, from time to time, in such manner as they shall deem equitable, upon each tenement or other place supplied with water or gas, such water or gas rents as may be agreed upon by the

Assessment and collection of water and gas rents; levy of tax to pay expenses of repairing and operating works or contracts for supply of gas or water.

council or trustees, or upon each vacant lot in front of which the pipes commonly called "street mains" are laid, but such vacant lots as do not take water from such "street mains" shall not be assessed more than one-half as much as may be assessed against the same amount of frontage of lots occupied by a one-story building; and gas should be charged for by the foot, and then only to such as use it; and at the regular time of levying taxes in each year, said city or town is hereby empowered to levy and cause to be collected, in addition to the other taxes authorized to be levied, a special tax on taxable property in said city or town, which tax, with the water or gas rents hereby authorized, shall be sufficient to pay the expenses of running, repairing and operating such works; and if the right to build, maintain and operate such works is granted to private individuals or incorporated companies by such cities or towns, and said cities or towns shall contract with said individuals or companies for a supply of water or gas for any purpose, such city or town shall levy each year, and cause to be collected a special tax as provided for above, sufficient to pay off such water or gas rents so agreed to be paid to said individuals or company constructing said works; *provided, however*, that said last mentioned tax shall not exceed the sum of three mills on the dollar for any one year.

Public wells, cisterns and reservoirs.

Seventy-second—They shall have power to construct public wells, cisterns and reservoirs in the streets and other public and private places within the city or town, or beyond the limits thereof, for the purpose of supplying the same with water; to provide proper pumps and conducting pipes or ditches; to regulate the distribution of water for irrigating and other purposes, and to levy an equitable and just tax upon all consumers of water for the purpose of defraying the expense of such improvements.

Taking of water from streams, creeks, etc.

Seventy-third—They shall have the right and privilege of taking water in sufficient quantity, for the purpose hereinbefore mentioned, from any stream, creek, gulch or spring in the state; *provided*, that if the taking of such water in such quantity shall materially interfere with or impair the vested right of any person or persons or corporation, heretofore acquired, residing upon such creek, gulch or

stream, or doing a milling or manufacturing business thereon, they shall first obtain the consent of such person or persons or corporation, or acquire the right of domain, by condemnation, as prescribed by the constitution and laws upon that subject, and make full compensation or satisfaction for all the damages thereby occasioned to such person or persons or corporation.

Condemnation of private property.

Seventy-fourth—When it shall be deemed necessary by any municipal corporation to enter upon or take private property for any of the above uses, the same shall be examined, appraised and the damages thereon assessed, and the proceedings in connection therewith shall be in all respects the same as is now or may hereafter be provided by general law for the taking of private property for public or private use.

Assessments upon lots or lands for public improvements be a lien onl ots or lands; how enforced.

Seventy-fifth—Each municipal corporation may, by general ordinance, prescribe the mode in which the charge on the respective owners of lots or lands, and on the lots or lands, shall be assessed and determined for the purposes authorized by this act; such charge, when assessed, shall be payable by the owner or owners at the time of the assessment, personally, and also be a lien upon the respective lots or parcels of land from the time of the assessment. Such charge may be collected and such lien enforced by a proceeding in law or in equity, either in the name of such corporation or of any person to whom it shall have directed payment to be made. In any such proceedings, where pleadings are required, it shall be sufficient to declare generally for work and labor done and materials furnished on the particular street, alley or highway, or for water rents or gas used. Proceedings may be instituted against all the owners, or any of them, to enforce the lien against all the lots or land, or each lot or parcel, or any number of them embraced in any one assessment; but the judgment or decree shall be separately for the amount properly chargeable to each. Any proceedings may be served, in the discretion of the court, for the purpose of trial, review or appeal.

Seventy-sixth—The establishment and maintenance of a free public library is hereby declared to be a proper and

Establishment and maintenance of free public library; appropriations therefor not to be made unless proposition be first submitted to vote.

legitimate object of municipal expenditure; and the council or trustees of any city or incorporated town may appropriate money for the formation and maintenance of such a library, open to the free use of all of its inhabitants, under proper regulations; and for the purchase of land and the erection of buildings, or for the hiring of buildings or rooms suitable for that purpose, and for the compensation of the necessary employés; *provided*, that the amount appropriated in any one year for the maintenance of such a library shall not exceed one mill upon the dollar upon the assessed valuation of such city or town. Any such city or incorporated town may receive, hold or dispose of any and all gifts, donations, devises and bequests that may be made to such city or incorporated town, for the purpose of establishing, increasing or improving any such public library; and the city or town council thereof may apply the use, profits, proceeds, interests, and rents accruing therefrom in such manner as will best promote the prosperity and utility of such library. Every city or incorporated town in which such a public library shall be maintained, shall be entitled to receive a copy of the laws, journals, and all other works published by authority of the state, after the establishment of such library, for the use of such library, and the secretary of state is hereby authorized and required to furnish the same from year to year to such city or incorporated town. But no appropriation of money can be made under this section, unless the proposition is submitted to a vote of the people at a municipal election of such city or town, in such manner as may be prescribed by ordinance.

ARTICLE IV. ORDINANCES, FINES AND SUITS.

Making and publishing of ordinances.

2656. SEC. 15. Municipal corporations shall have power to make and publish, from time to time, ordinances not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by this act, and such as shall seem necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort and convenience of such corporation and the inhabitants thereof, and to enforce obedience to such ordinances by fine not exceed-

ing three hundred dollars, or by imprisonment not exceeding ninety days.

Style of ordinances.

2657. SEC. 16. The style of the ordinances in cities or towns shall be: "*Be it ordained by the city council or board of trustees of*———"

Actions for recovery of fines or enforcements of penalties; what defense not allowed; who competent as judge, juror or witness; appeals.

2658. SEC. 17. All actions brought to recover any fine or to enforce any penalty under any ordinance of any city or town, shall be brought in the name of the people of the state of Colorado as plaintiff, and no prosecution, recovery or acquittal for the violation of any such ordinance shall constitute a defense to any other prosecution of the same party for any other violation of any such ordinance, although the different causes of action existed at the same time, and if united, would not have exceeded the jurisdiction of the court or magistrate, and no person shall be incompetent as judge, juror or witness in any action, to which the city or town shall be a party, on account of his or her being a resident citizen or property owner within such city or town. Appeals shall be allowed from judgment of any justice of the peace, or mayor, or police magistrate, to the county court in cases arising under this act, or the ordinances of any city or town, as in other cases.

Disposition of fines and forfeitures.

2659. SEC. 18. All fines and forfeitures for the violation of ordinances, and all moneys collected for licenses or otherwise shall be paid into the treasury of the corporation, at such times and in such manner as may be prescribed by ordinance, or if there be no ordinance referring to the case, then it shall be paid to the treasurer at once.

Manner of commencement of actions; commitment of offender until fine and costs are paid; rate of allowance for labor during confinement.

2660. SEC. 19. In all actions for the violation of any ordinance the first process shall be a summons; *provided, however*, that a warrant for the arrest of the offender may issue at the first instance upon the affidavit of any person that any such ordinance has been violated, and that the person making the complaint has reasonable grounds to believe the party charged is guilty thereof, and any person arrested upon such warrant shall, without unneccessary delay, be taken before the proper officer to be tried for the alleged offense. Any person upon whom any fine or penalty shall be imposed may, upon the order of the court or magistrate before whom the conviction is had, be com-

mitted to the county jail or calaboose, city prison, work house, house of correction or other place provided by the city or town for the incarceration of offenders, until such fine, penalty and cost shall be fully paid; *provided*, that no such imprisonment shall exceed ninety days for any one offense. The city council or board of trustees shall have power to provide by ordinance that every person so committed shall be required to work for the corporation at such labor as his or her strength will permit, within or without such prison, work house, house of correction or other place provided for the incarceration of such offenders, not exceeding ten hours each working day, and for such work the person so employed to be allowed, exclusive of his or her board, two dollars per day for each day's work on account of such fine and costs.

Who shall have jurisdiction in cases of violation of ordinances.

2661. SEC. 20. Any and all justices of the peace and police magistrates shall have jurisdiction in all cases arising under the provisions of this act or any ordinance passed in pursuance thereof, or the city council may designate one justice of the peace who shall have such jurisdiction exclusively.

Who to serve process.

2662. SEC. 21. Any constable or sheriff of the county may serve any process or make any arrests authorized to be made by any city or town officer.

Limitation of suits and prosecutions.

2663. SEC. 22. All suits for the recovery of any fine, and prosecutions for the commission of any offense made punishable as herein provided, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered.

Construction and repair of highways leading to city or town; submission of question of appropriation therefor to vote.

2664. SEC. 23. Any city or incorporated town may aid in the construction and repair of any highway leading thereto, by appropriating therefor a portion of the highway tax belonging to said city or incorporated town, not exceeding fifty per cent. thereof, annually, as hereinafter provided. When a petition shall be presented to the council or trustees, signed by twenty of the resident tax-payers of said city or town, asking that the question of aiding in the construction or repair of any highway leading thereto be submitted to the voters thereof, the council or trustees, immediately, shall give notice of a special election by post-

ing notice in five public places in said city or town at least ten days before said election, which notice shall specify the time and place of holding said election, the particular highway proposed to be aided, the proportion of the highway tax then levied and not expended, or next thereafter to be levied, to be appropriated; at which election the question of "appropriation" or "no appropriation" shall be submitted, and if a majority of votes polled be for appropriation, then the council or trustees may aid in the construction and repair of said highway to the extent of said appropriation, in the same manner as they otherwise would if said highway was within the corporate limits of said city or town; but no part of such highway tax shall be expended more than two miles from the limits of such city or town.

Ordinances, etc. for appropriation of money; what required for passage; how ordinances proven; how to be received in evidence.

2665. SEC. 24. All ordinances and resolutions, or orders for the appropriation of money shall require for their passage or adoption, the concurrence of a majority of all the members elected of the council or board of trustees of any municipal corporation; all ordinances may be proven by the seal of the corporation and when printed in book form or pamphlet form, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

Record and authentication of ordinances; what shall be published, and manner of publication.

2666. SEC. 25. All ordinances shall, as soon as may be after their passage, be recorded in a book kept for that purpose, and be authenticated by the signature of the presiding officer of the council or board of trustees, and the clerk; and all by-laws of a general or permanent nature, and those imposing any fine, penalty, or forfeiture, shall be published in some newspaper of general circulation in the municipal corporation, and it shall be deemed a sufficient defense to any suit or prosecution for such fine, penalty or forfeiture to show that no such publication was made; *provided, however*, that if no such newspaper is published within the limits of the corporation, then and in that case, such by-laws may bepublished by posting copies thereof in three public places within the limits of the corporation, two of which places shall be the postoffice

and the mayor's office of such town or city; and such by-laws and ordinances shall not take effect and be in force until the expiration of five days after they have been published. But the book of ordinances herein provided for shall be taken and considered in all courts of this state as *prima facie* evidence that such ordinances have been published as provided by law.

Manner of passage or adoption of ordinances, and appointment of officers.

2667. SEC. 26. On the passage or adoption of every by-law or ordinance, and every resolution or order to enter into contract by any council or board of trustees of any municipal corporation, the yeas and nays shall be called and recorded; and to pass or adopt any by-law, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the council or board of trustees shall be required; all appointments of officers by any council shall be by ballot, and the concurrence of a like majority shall be required, and the names of those who voted, and the vote each candidate received upon the vote resulting in an appointment, shall be recorded.

Passage of ordinances directing condemnation of private property or improvement of street or highway.

2668. SEC. 27. No street or highway shall be opened, straightened or widened, nor shall any other improvement be made which will require proceedings to condemn private property, without the concurrence in the ordinance or resolution directing the same, of two-thirds of the whole number of the members elected to the council or board of trustees; and the concurrence of a like majority shall be required to direct any improvement or repair of a street or highway, the cost of which is to be assessed upon the owners, unless two-thirds of the owners to be charged therefor shall petition in writing for the same.

ARTICLE V. FINANCE.

Fiscal year; when to commence; annual appropriation bill; no further appropriations unless sanctioned by legal voters.

2669. SEC. 28. The fiscal year of each city or town, organized under this act, shall commence on the first day of April in each year, or at such other time as may be fixed by ordinance. The city council of cities and board of trustees in towns shall, within the last quarter of each fiscal year, pass an ordinance, to be termed the annual appropriation bill for the next fiscal year, in which such corporate authorities may appropriate such sum or sums of money as

may be deemed necessary to defray all necessary expenses and liabilities of such corporation, and in such ordinance shall specify the objects and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriations shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city or town, either by a petition signed by them, or at a general or special election duly called therefor. Nor shall the total amount appropriated exceed the probable amount of revenue that will be collected during the fiscal year.

Expenditures not to exceed appropriations, except in case of casualty or accident.

2670. SEC. 29. Neither the city council, nor the board of trustees, nor any department or officer of the corporation, shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual apppropriation bill of that year, except as is herein otherwise specially provided; and no expenditure for an improvement, to be paid for out of the general fund of the corporation, shall exceed in any one year the amount provided for such improvement in the annual appropriation bill; *provided, however*, that nothing herein contained shall prevent the city council or board of trustees from ordering, by a two-thirds vote, any improvement the necessity of which is caused by any casualty or accident happening after such annual appropriation is made.

No contracts to be made nor expenses incurred unless appropriation be previously made therefor.

2671. SEC. 30. No contract shall be hereafter made by the city council or board of trustees, or any committee or member thereof; and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or board of trustees or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided.

THE TREASURER.

Bond of treasurer; amount and conditions.

2672. SEC. 31. The treasurer shall give a bond to the city or town in its corporate name, with good and sufficient sureties, to be approved by vote of the council or board of trustees in such sum as the council or trustees may require,

and conditioned for the faithful performance of his duties as treasurer of such city or town so long as he shall serve as such treasurer, and that when he shall vacate such office he will turn over and deliver to his successor all money, books, papers, property or thing belonging to such city or town, and remaining in his charge as such treasurer.

Duties of treasurer.

2673. SEC. 32. The treasurer shall receive all moneys belonging to the corporation, and shall keep his books and accounts in such manner as may be prescribed by ordinance; and such books and accounts shall always be subject to the inspection of any member of the city council or board of trustees.

Separate accounts of appropriations.

2674. SEC. 33. He shall keep a separate account of each fund or appropriation, and the debts and credits belonging thereto.

Receipts for moneys paid into treasury.

2675. SEC. 34. He shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and upon what account paid; and he shall also file statements of such receipts with the clerk at the date of his monthly reports.

Monthly account of treasurer; what to show; disposition of warrants paid.

2676. SEC. 35. He shall, at the end of each and every month, and oftener if required, render an account to the city council or board of trustees, or such officer as may be designated by ordinance, showing the state of the treasury at the date of such account, and the balance of money in the treasury. He shall also accompany such accounts with a statement of all moneys received into the treasury, and on what account, during the preceding month, together with all warrants redeemed and paid by him; which said warrants, with any and all vouchers held by him, shall be delivered to the clerk and filed with his said account in the clerk's office upon every day of such statement. He shall return all warrants paid by him stamped or marked "paid." He shall keep a register of all warrants redeemed and paid, which shall describe such warrants, and show the date, amount, number, the fund from which paid, the name of the person to whom and when paid.

2677. SEC. 36. He may be required to keep all moneys in his hands belonging to the corporation in such place of deposit as may be designated by ordinance; *pro-*

vided, however, no such ordinance shall be passed by which the custody of such money shall be taken from the treasurer. The treasurer shall keep all moneys belonging to the corporation in his hands separate and distinct from his own moneys, and he is hereby expressly prohibited from using, either directly or indirectly, the corporation money or warrants in his custody and keeping for his own use or benefit or that of any other person or persons whomsoever, and any violation of this provision shall subject him to immediate removal from office by the city council or board of trustees, who are hereby authorized to declare said office vacant, and in which case his successor shall be appointed, who shall hold his office for the remainder of the term unexpired of such officer so removed.

Deposit and custody of moneys; removal from office for converting corporation moneys to his own use.

2678. SEC. 37. He shall report to the city council or board of trustees, as often as required, a full and detailed account of all receipts and expenditures of the corporation as shown by his books up to the time of said report; and he shall, annually, between the first and tenth of April, make out and file with the clerk a full and detailed account of all such receipts and expenditures and of all his transactions as such treasurer during the preceding fiscal year, and shall show in such account the state of the treasury at the close of the fiscal year; which account the clerk shall immediately cause to be published in a newspaper printed in such city, if there be one, and, if not, then by posting the same in a public place in the clerk's office.

Reports to city council or board of trustees; annual report of receipts and expenditures.

2679. SEC. 38. All warrants drawn upon the treasurer must be signed by the mayor and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable; and no money shall be drawn except as hereinafter provided.

Warrants; how to be signed.

2680. SEC. 39. All moneys received on any special assessment shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and said money shall be used for no other purpose whatever, unless to reimburse such corporation for money expended for such improvement.

Moneys received on special assessments.

Duties of collector, other than treasurer.

2681. SEC. 40. It shall be the duty of the collector—if anyone except the treasurer shall be specially appointed—or the person acting in that capacity, to preserve all warrants which are returned into his hands, and he shall keep such books and his accounts in such manner as the city council may prescribe. Such warrants, books, and all papers pertaining to his office, shall at all times be open to the inspection of and subject to the examination of the mayor, any member of the council or board of trustees, or committee thereof. He shall weekly, and oftener if required by the council or board of trustees, pay over to the treasurer all moneys collected by him from any source whatever, taking such treasurer's receipt therefor, which receipt he shall immediately file with the city or town clerk, as the case may be; but the clerk shall at the time, or on demand, give such collector a copy of any such receipt so filed.

Reports of collector to council or board of trustees; publication of annual report.

2682. SEC. 41. He shall make a report, in writing, to the council or board of trustees, or any officer designated by them, of all moneys collected by him, the account whereon collected, or of any other matter connected with his office, when required by the council or board of trustees, or by any ordinance of the town or city. He shall also annually, between the first and tenth of April, file with the clerk a statement of all the moneys collected by him during the year, the particular warrant, special assessment or account on which collected, the balance of moneys uncollected on all warrants in his hands, and the balance remaining uncollected at the time of the return, on all warrants which he shall have returned during the preceding fiscal year to the clerk. The clerk shall publish or post the same as hereinbefore required to be done in regard to the annual report of the treasurer.

Payment of moneys collected to treasurer; removal from office for default.

2683. SEC. 42. The collector is hereby expressly prohibited from keeping the moneys of the city or town in his hands, or in the hands of any person or corporation, to his use, beyond the time prescribed for the payment of the same to the treasurer, and any violation of this provision will subject him to immediate removal from office. All the city collector's papers, books, warrants and vouchers may be examined at any time by the mayor or clerk, or any

member of the council or board of trustees; and the collector shall, every two weeks, or oftener if the city council or board of trustees so direct, pay over all money collected by him from any person or persons or associations, to the treasurer, taking his receipt therefor in duplicate, one of which receipts he shall at once file in the office of the clerk.

GENERAL TAXES.

Levy of taxes.

2684. SEC. 43. The city council or board of trustees of any city or town shall have power and authority to levy taxes, the same kinds and classes, upon taxable property, real, personal and mixed, within the limits of the city or town as are subject to taxation for state or county purposes, in accordance with the laws of this state.

Designation of city property by county assessors

2685. SEC. 44. It shall be the duty of the county assessor each year, in making his return, to designate the property situate within the limits of any city or town in such county.

Return of assessment roll and appearance before county board of equalization.

2686. SEC. 45. The county assessor shall, at the same time at which he files his return with the county clerk or other county officers, file with the clerk or recorder of each incorporated town or city a duplicate return of all property situate within the limits of any city or town in such county, and the council or board of trustees of any such city or town shall appear, or authorize one of their number to appear, before the county commissioners, sitting as a board of equalization, and recommend such amendments and additions to or changes in the assessment made by the county assessor of the property or any portion thereof, within the limits of such city or town as they may deem just.

Extension of city or town taxes upon tax list by county clerks.

2687. SEC. 46. It shall be the duty of the county clerk and recorder, as soon as the assessment roll is ready in each year, for the extension of the taxes, to extend the same upon the tax list of the current year, in a separate column, properly headed, in the same manner as other taxes are extended, carrying said city or town tax into the general total of all taxes for the year, and shall include said city and town taxes in his general warrant to the county treasurer for collection.

Return of delinquent assessments or taxes to county clerk and collection thereof by county treasurer.

2688. SEC. 47. Any municipal corporation may, in addition to the means provided, if by ordinance it so elects, cause any or all delinquent charges, assessments or taxes made or levied under and by virtue of, and for the purpose specified in this act, or referred to therein, to be certified to the county clerk of the county, and be collected and paid over by the treasurer of the county, in the same manner as taxes are authorized to be by this act.

In what manner city or town taxes collected and under what laws.

2689. SEC. 48. It shall be the duty of the treasurer of said county, and he is hereby authorized and empowered to collect the said city or town taxes, in the same manner and at the same time as other taxes upon the same tax list are collected. And all the laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for taxes, and the redemption of the same, shall apply and have as full effect for the collection of such city or town taxes as for such general taxes, except as modified by this act. The said county treasurer shall at the close of every month, and oftener if the city council or board of trustees of said city or town shall require, pay over to the city or town treasurer, all money so by him collected, upon the presentation to him of an order signed by the mayor and clerk or recorder of such city or town; and any such county treasurer shall be liable on his official bond for the faithful discharge of all the duties and obligations hereby imposed upon him.

Disposition of city or town funds collected by county treasurer.

Compensation of county officers and allowances for advertising tax sales.

2690. SEC. 49. The council or board of trustees of said city or town shall in each year make such allowance, to be paid out of the general fund to the said county officers, as shall be a reasonable and just compensation for the extra labor imposed by this act, and shall also make an allowance, to be paid out of the general fund to the county in which said city or town is located, for the city's or town's proportion of the expense of advertising the sale of lands for delinquent taxes in each year, the amount to be certified to the council or board of trustees by the clerk and recorder of the proper county.

ARTICLE VI. OFFICERS.

2691. SEC. 50. The first Tuesday in April shall be the regular annual period for the election of municipal officers, and all officers whose election is provided for in this act or may be provided for by ordinance shall be elected on that day. The trustees or council of every municipal corporation shall direct the place or places for holding elections for municipal officers, and whenever the corporation is divided into wards or precincts there shall be one such place in each ward or precinct, and any person who, at the time of any election of municipal officers, would be a qualified elector under the laws of the state for county officers, and shall have actually resided in the ward or precinct in which he offers to vote for the ten days last preceding the election, shall be deemed a qualified voter; and all elections for municipal officers shall in all respects be held and conducted in the manner prescribed by law in case of county elections.

Elections for municipal officers; at what places to be held and qualifications of voters thereat.

2692. SEC. 51. At all elections in cities and incorporated towns which are not divided into election districts or wards the mayor and trustees, any three of whom shall be a quorum, shall serve as judges, and the recorder shall serve as clerk, and after canvassing the votes which may be given at such election they shall declare the result, and the recorder shall make out and deliver to each person elected to any office in such city or town a certificate of such election.

Elections in cities and towns not divided into election districts or wards.

2693. SEC. 52. The returns of all municipal elections in cities and incorporated towns which are divided into election districts or wards, shall be made to the clerk or recorder of the corporation, and shall be opened by him on the third day after election. He shall call to his assistance the mayor of the corporation, or if there be no mayor or the mayor shall have been a candidate at such election, then any justice of the peace of the county, and shall, in his presence, make out an abstract and ascertain the candidates elected in all respects as required by law for the canvass of the returns of county elections, and shall, in like manner, make out a certificate as to each candidate so

To whom returns of elections shall be made, and manner of canvassing vote.

elected and cause the same to be delivered to him or to be left at his place of abode.

Oath and bond of city or town officers.

2694. SEC. 53. All officers elected or appointed in any municipal corporation, shall take an oath or affirmation to support the constitution of the United States and the constitution of the state of Colorado, and the trustees or council of any municipal corporation shall require from the treasurer and such other officers as they may think proper, a bond with proper penalty and surety, for the care and disposition of corporation funds in their hands, and the faithful discharge of the duties of their office; and such trustees or council shall have the power to declare the office of any person appointed or elected to any office who shall fail to take the oath of office, or give bond when required, for ten days after he shall have been notified of appointment or election, vacant, and proceed to appoint as in other cases of vacancy.

Compensation of trustee or alderman.

2695. SEC. 54. No trustee or alderman shall receive any compensation for his services as trustee or alderman, except as provided by law.

Appointment of trustee or alderman to municipal office, or interest in contracts prohibited

2696. SEC. 55. No trustee or alderman shall, during the time for which he has been elected, or for one year thereafter, be appointed to any municipal office which shall be created, or the emoluments of which shall be increased during the term for which he shall have been elected, except in the cases provided in this act; nor shall any such trustee or alderman be interested, directly or indirectly, in the profits of any contract or job for work or services to be performed for the corporation.

Increase of emoluments of office prohibited

2697. SEC. 56. The emoluments of no officer whose election or appointment is required by this act, shall be increased or diminished during the term for which he shall have been elected or appointed; nor shall any change of compensation affect any officer whose office shall be created under the authority of this act during his existing term, unless the office be abolished; in which case the emoluments of the office shall cease at the time of the abolishment of the office, and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed, when during the same time the emoluments had been increased.

ARTICLE VII. CLASSES OF MUNICIPAL CORPORATIONS.

Classification of cities and towns.

2698. SEC. 57. In respect to the exercise of certain corporate powers, and the duties of certain officers, municipal corporations are divided into cities of the first and cities of the second class, and incorporated towns.

Designation of the different classes.

2699. SEC. 58. Every municipal corporation having a population of fifteen thousand and upwards, shall be a city of the first class; every municipal corporation having a population exceeding two thousand, and less than fifteen thousand, shall be a city of the second class; and every municipal corporation having a population of two thousand or less, shall be deemed an incorporated town.

Ascertainment and notification of grade by officers of the executive department; organization under new grade.

2700. SEC. 59. The governor, auditor of state, and secretary of state, or any two of them, within six months after the returns of any census have been filed in the office of the secretary of state, shall ascertain what cities of the second class are entitled to become cities of the first class, and what incorporated towns are entitled to become cities of their proper class. And the governor shall cause a statement thereof to be prepared by the secretary of state, which statement he shall cause to be published in some newspaper published in the state capital, and also in some newspaper, if there be such, printed in each of the cities and incorporated towns entitled to such advancement in grade, and a copy of said statement shall also be transmitted by the secretary of state, to the mayor of such city or town, and to the next general assembly; and any such city or incorporated town shall, at the next regular annual period for the election of municipal officers, if the council or board of trustees shall deem the change of grade desirable, proceed to organize according to its new grade, by the election of officers properly belonging thereto; and on their election and qualification the term of service of former officers shall expire.

Making and publishing of ordinances for perfection of organization under new grade.

2701. SEC. 60. So soon as the statement shall be published, as above provided, showing that any city or incorporated town will be entitled, at the next regular annual period for the election of municipal officers, to be organized into a city of the first or second class, as the case may be,

the proper authority of such city or incorpoated town may make and publish such ordinances as may be necessary to perfect such organization in respect to the election, duties and compensation of officers or otherwise.

ARTICLE VIII. CITIES.

In whom corporate authority to be vested.

2702. SEC. 61. The corporate authority of cities organized under this act shall be vested in a mayor and a board of aldermen, to be denominated the city council, together with such officers as are in this act mentioned or may be created under its authority.

Election of mayor; qualifications.

2703. SEC. 62. The mayor shall be elected annually by a plurality of votes of the qualified voters of the city. He shall be a qualified elector and reside within the limits of the city, and shall hold his office for the term for which he shall have been elected or qualified. He shall keep an office at some convenient place in the city, to be provided by the city council; he shall sign all commissions, licenses and permits granted by the authority of the city council, and such other acts as by the law or ordinances may require his certificate.

How office of mayor filled in case of vacancy.

2704. SEC. 63. In case of the mayor's death, disability, resignation or other vacation of his office, the city council shall order a special election as soon as practicable to fill the vacancy for the remainder of the term of office, and may appoint some qualified elector to act as mayor until such special election.

Duties and salary of mayor.

The mayor of the city shall be its chief executive officer and conservator of the peace; and it shall be his special duty to cause the ordinances and the regulations of the city to be faithfully and constantly obeyed; he shall supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against any of them, and cause all the violations of their duty or their neglect to be promptly corrected or reported to the proper tribunal for punishment and correction; he shall have and exercise, within the city limits, the powers conferred upon the sheriffs of counties to suppress disorders and keep the peace; he shall also perform such other duties compatible with the nature of his office as the council may from time to time require; he shall receive

such salary, payable quarterly out of the city treasury, as may be provided by ordinance, but the amount of such salary shall neither be increased or diminished during an incumbent's term of office.

Numbers, divisions and boundaries of wards.

2705 SEC. 64. The numbers, divisions and boundaries of the several wards of all cities heretofore incorporated, shall remain as fixed at the time when this law goes into operation, until changed by the city council; said council may at any time create new wards, or alter those now established, or the boundaries thereof, as may be deemed expedient; but in cities of the second class, the number of wards now existing shall not be decreased, nor shall they be increased beyond six.

Organization of city council.

2706. SEC. 65. The members of the council elected for each city shall, on the second Monday after the election, meet and organize the city council. A majority of the whole number of members shall be necessary to constitute a quorum for the transaction of business; they shall be judges of the election returns and qualification of their own members; they shall determine the rule of their own proceedings and keep a journal thereof, which shall be open to the inspection and examination of any citizen; they may compel the attendance of absent members in such manner and under such penalties as they shall think fit to prescribe, and shall elect from their own body a temporary president; they shall also appoint from the qualified electors of the city, a city clerk, who shall have the custody of all the laws and ordinances of the city, and shall keep a regular and correct journal of the proceedings of the council, and shall perform such other duties as may be required by the ordinances of the city. The clerk in office, at the expiration of the term of service of any council, shall continue in office until his successor shall be appointed and qualified.

Appointment of city clerk.

Seal of corporation; fees of city clerk for attested transcripts and certificates.

2707. SEC. 66. Each city council shall cause to be provided for the clerk's office a seal, which shall be the seal of the corporation, in the center of which shall be the word "seal" and such other device as may be directed by ordinance, and around the margin the name of the city or town and the state. Said seal shall be affixed to all transcripts, orders or certificates which may be necessary or proper to

authenticate under the provisions of this act or any ordinance of the city. For all attested certificates and transcripts other than those ordered by the city council, the same fees shall be paid to the clerk as are allowed to county officers for similar services.

Powers of city council.

2708. SEC. 67. The city council shall possess all the legislative powers granted in this act, and other corporate powers of the city not herein, or by some ordinance of the city council, conferred on some officer of the city; they shall have the management and control of the finances, and all the property, real and personal, belonging to the corporation; they shall determine the times and places of holding their meetings, which shall at all times be open to the public; and the mayor and any three members may call special meetings by notice to each of the members of the council personally served or left at his usual place of residence; they shall appoint or provide by ordinance, that the qualified electors of the city, or of the wards or districts, as the case may require, shall elect all such city officers as may be necessary for the good government of the city, and for the due exercise of its corporate powers, and which shall have been provided for by ordinance, as to whose election or appointment provisions have not herein been made; and all city officers whose terms of service are not prescribed, and whose powers and duties are not defined by this act, shall perform such duties, exercise such powers, and continue in office such period, not exceeding one year, and until their successors are appointed and qualified, as shall be prescribed by ordinance; but all officers to be elected shall be elected at the regular annual election for municipal corporations, or at special elections to fill vacancies. The officers of cities shall receive such compensation and fees for their services as the council shall by ordinance prescribe.

Term of office and compensation.

Regulations for markets or hucksters.

2709. SEC. 68. No charge or assessments of any kind shall be levied on any wagon or other vehicle, or the horses thereto attached, or on the owner thereof, bringing produce or provisions to any of the markets in the city, for standing in or occupying a place in any of the market places of the city or in the streets contiguous thereto, on market days

and evenings previous thereto; but the city council shall have full power to prevent forestalling, to prohibit or regulate huckstering in the markets, to prescribe the kind and description of articles which may be sold, and the stands and places to be occupied by the vendors, and may authorize the immediate seizure or arrest, or removal from the markets, of any person or persons violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

Care, supervision and control of public highways, bridges, streets, alleys, etc.

2710. SEC. 69. The city council shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons within the city, and shall cause the same to be kept open and in repair, and free from nuisances; all public bridges exceeding forty feet in length, over any stream crossing a state or county highway, shall be constructed and kept in repair by the county; *provided*, that the city council may appropriate a sum not exceeding ten dollars per lineal foot to aid in the construction of any county bridge within the limits of such city, or to aid in the construction of any bridge contiguous to said city on a highway leading to the same, or any bridge across any unnavigable river which divides the county in which said city is located from another state.

Construction and repair of bridges over streams crossing state or county highway.

Expulsions and removals from office; how vacancies filled.

2711. SEC. 70. Any member of the city council may be expelled or removed from office, for a good cause shown, by a vote of two-thirds of all the members elected to the city council, but not a second time for the same offense; any officer appointed by the city council may be removed from office by a vote of a majority of all the members elected to the city council, and provision may be made by ordinance as to the mode in which charges shall be preferred and a hearing be had; in all cases of vacancies in the city council they shall be filled by special election; and in case any office of an elective officer, except members of the city council, shall become vacant, before the regular expiration of the term thereof, the vacancy shall be filled by the city council until a successor is elected and qualified; and such successor shall be elected for the unexpired term.

CITIES OF THE FIRST CLASS.

Mayor of cities of first class; annual report; appointment of police and watchmen.

2712. SEC. 71. The mayor of the cities of the first class shall be president of the council, and have a casting vote in case of a tie, and no other, and at the first regular meeting of the city council, in the month of April, in every year, and at such other times as he may deem expedient, report to the city council concerning the municipal affairs of the city, and recommend such measures as to him may seem advisable; he shall appoint, with the consent of the council, one chief of police, and as many subordinate officers and watchmen as the city council may deem necessary, who shall hold their appointments until removed for cause by the city council, or until said council shall deem their services no longer needed; he shall have power, in case of emergency, to appoint as many special watchmen as he may think proper, but such appointments shall be reported to and subject to the action of the city council at its next meeting.

Annual election of aldermen; qualifications; term of office.

2713. SEC. 72. The qualified electors of each ward, in cities of the first class, shall annually, on the first Tuesday of April, elect by a plurality of votes, one alderman or member of the city council, who shall at the time be a resident of the ward and a qualified elector therein. His term of service shall be two years; and if any vacancy shall occur in the office of alderman by death, resignation, removal or otherwise, the same shall be filled by election, so that there may always be in the council two members from the same ward whose terms of service shall expire in different years; but at the first election held on the organization of a new city government, under this act, two aldermen or members of the city council shall be elected in each ward, and the city council shall determine by lot their terms of service, so that one member from each ward may serve for two years, and one for one year.

How vacancies filled.

First election after organization under this act.

Election of city officers.

2714. SEC. 73. The qualified electors shall also elect a treasurer by a plurality of votes, who shall hold his office for two years and until his successor is elected and qualified; and the city council may elect a city attorney or solicitor, a marshal, a police judge and a city engineer;

each of said officers shall have such powers and perform such duties as are prescribed in this act or by general law or by ordinance of the city not inconsistent herewith.

Powers and duties of chief of police.

2715. SEC. 74. The chief of police shall execute and return all processes to him directed by the mayor or judge of the police court, and shall attend on the sittings of said court; he shall have power to execute any such process, by himself or special deputy, in any part of the county; he shall suppress all riots, disturbances and breaches of the peace, apprehend all persons committing any offenses against the laws of the state or the ordinances of the city, and forthwith bring such person before the proper authority for examination or trial; he shall have power to pursue and arrest any person fleeing from justice in any part of the state, and to receive and execute any proper authority for the arrest or detention of criminals fleeing or escaping from other places or states; he shall have, in the discharge of his proper duties, like powers, and be subject to like responsibilities, as sheriffs or constables in similar cases.

City infirmary.

2716. SEC. 75. The city council shall have power to establish and maintain an infirmary for the accommodation of the poor of the city, either within or without the limits of the city, and to provide for the distribution of out-door relief to the poor.

Punishment of infant offenders against provisions of city ordinances.

2717. SEC. 76. All children under the age of sixteen years who shall be convicted of any offense made punishable by imprisonment under any ordinance of the city, or who shall be liable to be committed to prison under any such ordinance, may be confined in such house of refuge or reform school, and may be there kept or apprenticed out under such rules as the city council or the directors of the house of refuge or reform school may prescribe, until they arrive at the age of eighteen years.

Appointment of officers of police and watchmen and their duties; reserved watch.

2718. SEC. 77. The city council shall, by a general ordinance, direct the number of officers of the police and watchmen to be appointed. They may also provide, in addition to the regular watch, for the appointment of a reserved watch, to consist of a suitable number of persons in each ward, to be called into duty as the council may prescribe, by the mayor or officers of the police, under his direction, in

special cases of emergency. The duty of the chief and other officers of the police, and of the watchmen, shall be, under the direction of the mayor and in conformity with the ordinance of the city, to suppress all riots, disturbances and breaches of the peace; to pursue and arrest any person fleeing from justice in any part of the state; to apprehend any and all persons in the act of committing any offense against the laws of the state or ordinances of the city, and to forthwith bring such person or persons before the police court or other competent authority for examination; and at all times to diligently and faithfully enforce all such laws, ordinances and regulations for the preservation of good order and public welfare as the city council may ordain, and for such purpose they shall have all the power of constables. The mayor, chief of police and watchmen of the city, may, upon view, arrest any person who may be guilty of a breach of the ordinances of the city or of any crime against the laws of the state, and may, upon reasonable information, supported by affidavits, procure process for the arrest of any person who may be charged with a breach of any of the ordinances of the city.

Arrests for violations of city ordinances.

CITIES OF THE SECOND CLASS.

Mayor of cities of the second class.

2719. SEC. 78. The mayor of cities of the second class shall be the presiding officer of the city council, and shall constitute a member of such council, and shall vote when there is a tie, but not otherwise.

Election and term of office of aldermen and other city officers.

2720. SEC. 79. The qualified electors of each ward in cities of the second class, shall annually, on the first Tuesday of April, elect by a plurality of votes, one alderman, who shall at the time be a resident of the ward and a qualified elector therein. His term of service shall be two years, and if any vacancy shall occur in the office of alderman by death, resignation, removal or otherwise, the same shall be filled by election. The qualified electors of each city of the second class shall also elect, by a plurality of votes, a city treasurer, who shall hold his office for one year; and shall have such powers and perform such duties as are prescribed in this act, or by ordinance of the city council not inconsistent herewith. In all such cities, the marshal and

police shall be elected by the city council, and the city council may elect a solicitor and a police judge, who shall hold their offices during its pleasure.

Duties of city marshal.

2721. SEC. 80. The marshal of the cities of the second class shall execute and return all writs and processes to him directed by the mayor or police judge, and in criminal cases, or cases in violation of city ordinances, he may serve the same in any part of the city; he shall suppress all riots, disturbances and breaches of the peace, apprehend all disorderly persons in the city, and shall pursue and arrest any person fleeing from justice in any part of the state; he shall apprehend any person in the act of committing any offense against the laws of the state or ordinances of the city, and forthwith bring such persons before the mayor or other competent authority for examination and trial; he shall have, in the discharge of his proper duties, like powers, be subject to like responsibilities, as sheriffs or constables in similar cases.

ARTICLE IX. INCORPORATED TOWNS.

Organization of board of trustees; term of office.

2722. SEC. 81. The corporate authority of incorporated towns, organized for general purposes, shall be vested in a board of trustees consisting of one mayor, one recorder, and four other trustees, who shall be qualified electors residing within the limits of the corporation, and shall hold their office for one year, and until their successors are elected and a quorum qualified; any four of said trustees shall be a quorum for the transaction of business.

Presiding officer and clerk of board of trustees

2723. SEC. 82. The mayor, or in case of his absence the recorder, shall preside at all meetings of the board of trustees; the recorder shall also be clerk of the corporation, and shall attend all meetings of the board of trustees and make a fair and accurate record of all their proceedings, rules and ordinances made and passed by the board of trustees, and the same shall at any time be open for the inspection of electors of the corporation.

Special elections to fill vacancies; appointments *pro tempore*.

2724. SEC. 83. The board of trustees shall have power to order special elections to fill vacancies which may happen in the board, from the qualified electors of the corporation, who shall hold their office until the next

annual election, and until their successors are elected and qualified, and in the absence of the mayor and recorder from any meeting of said board, the members thereof shall have the power to appoint any two of their number to perform the duties of mayor and recorder for the time being.

Election of treasurer and other officers.

2725. SEC. 84. The board of trustees of any incorporated town shall have power to provide, by ordinance, for the election of a treasurer, and such subordinate officers as they may deem necessary for the good government of the corporation, to prescribe their duties (when the same are not defined in this act) and compensation or the fees they shall be entitled to receive for their services, and to require of them an oath of office, and a bond, with surety, for the faithful discharge of their duties. The election of any such officer shall be at the regular annual election, and no appointment of any officer shall endure beyond one week after the qualification of the members of the succeeding board of trustees.

Powers and duties of marshal.

2726. SEC. 85. A marshal shall be appointed by the trustees, and shall be the principal ministerial officer of the corporation, and shall have the same power that constables have by law, co-extensive with the county, in cases of violation of town ordinances; and for offenses committed within the limits of the corporation. He shall execute the process of the mayor, and receive the same fees for his services that constables are allowed in similar cases.

Removals from office.

2727. SEC. 86. By the concurrent vote of four members of the board of trustees, the mayor, recorder, or any member of the said board, or any officer of the corporation, may be removed from office; but no such removal shall be made without a charge in writing and an opportunity of hearing being given, unless the officer against whom the charge is made shall have removed out of the limits of the corporation; and when any officer shall cease to reside within the limits of the corporation, it shall be deemed a good ground for a removal from office.

ARTICLE X. INCORPORATION UNDER THIS ACT.

2728 SEC. 87. Any city, town or village incorporated by special charter, or in any other manner than that pro-

vided by this act, may abandon its organization and organize itself under the provisions of this act, with the same territorial limits, by pursuing the course herein prescribed. Reorganization under this act

2729. SEC. 88. Upon the petition of one-eighth of a number equal to the whole number of votes cast at the last preceding annual election for the city or town officers, and who are legal voters in any such city or town, to the council or trustees thereof, praying that the question of organizing under this act be submitted to the legal voters, the council or trustees shall immediately direct a special election to be held, at which such question shall be decided, specifying at the same time the time and place of holding the same, and appointing the judges and clerks of the election. Submission of question of reorganization to vote at special election.

2730 SEC. 89. The mayor, or in case there is no mayor, the presiding officer of the council or board of trustees, shall at once issue a proclamation giving notice of such election, of the question submitted to the electors, and of the time and place of holding the election; which proclamation shall be published for four consecutive weeks in some newspaper published in such city or town; and if there is none published therein, then such proclamation shall be published by posting a copy thereof in five public places within the corporate limits of such city or town; but such question shall not be submitted oftener than once in one year. Proclamation of presiding officer; what to set forth.

2731. SEC. 90. At such election, those who desire to vote in favor of organizing under this law, shall deposit a ballot with the words "for municipal organization under the general law;" those desiring to vote against organizing under this law, shall deposit a ballot with the words "against municipal organization under the general law." The election shall be conducted in other respects as elections for the corporation officers are conducted under the old organization. The abstract of votes shall be returned to the city council or board of trustees, who shall canvass the same and declare the result, which shall be entered on the journal. Manner of voting; conduct of election and canvassing vote.

2732. SEC. 91. If a majority of the votes cast at such election be in favor of organization under this act, the council or trustees shall immediately call a special election

Special election of officers under new organization

for the election of officers for such corporation, according to its class, as defined by this act; and from and after the election and qualification of such officers the former organization of such city or town shall be considered as abandoned, and such city or town shall be considered as organized, and shall have all the rights and be subject to all the liabilities of the class to which it belongs, but the officers so elected shall hold their offices only until the next annual municipal election in such city or town.

Prior rights and liabilities.

2733. SEC. 92. All rights and property of every description which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal corporation under the organization herein contemplated; and no right or liability, either in favor of or against such corporation existing at the time, and no suit or prosecution of any kind shall be affected by such change; *provided*, that where a different remedy is given by this act, which can properly be made applicable to any right existing at the time such change is made, the same shall be deemed cumulative to remedies before provided and may be used accordingly.

Including contiguous territory in reorganization

2734. SEC. 93. Whenever any territory has been or shall hereafter be laid off or platted adjoining or contiguous to any organized town or to any addition or sub-division thereof, and the proprietor or proprietors of such territory shall not have constituted the same an addition to such town, as provided in this act, and the inhabitants of which territory shall not have become incorporated as a separate town prior to the date of the passage of this act, the town to which such territory is contiguous may proceed to abandon its organization and reorganize under this act in manner as provided in this article, and in such reorganization may include all or any part of the territory so laid off or platted, as aforesaid, and in such cases the boundaries of the whole town, including such territory, shall be set forth in the petition mentioned in this article, and all legal voters residing within those boundaries shall be entitled to vote at the election contemplated in this article.

ARTICLE XI. DISCONTINUANCE OF INCORPORATION.

Petition to county court for discontinuance of incorporation; submission of question to vote.

2735. SEC. 94. Whenever one-fourth of the legal voters of any city or incorporated town in this state, whether incorporated under this or previous acts, shall petition the county court of the county wherein such corporation is situated for the discontinuance of the same, the said court shall cause to be published, for at least thirty days, a notice stating that the question of discontinuing such corporation will be submitted to the legal voters of the same at the next annual corporation election.

Form of ballots.

2736. SEC. 95. The form of ballots shall be, "for the incorporation," and "against the incorporation."

Discontinuance by two-thirds vote; provision for accrued indebtedness, contracts and obligations.

2737. SEC. 96. If two-thirds of all the legal votes cast for and against such proposition shall be cast "against the incorporation," then the same may be discontinued. The vote provided for in this and the two preceding sections shall not be construed to discontinue any corporation until the said corporation shall have made ample provisions for the payment of all its indebtedness, and for the faithful performance of all its contracts and obligations, and shall have levied the requisite tax therefor.

Canvass of vote; by whom expenses to be paid.

2738. SEC. 97. The vote for this purpose shall be taken, canvassed and returned in the same manner as in other municipal elections, and all expenses of the same shall be paid by the corporation so voting, when the result of the vote shall be "against the incorporation"; but by the petitioners when the result shall be "for the incorporation."

Disposition of records and seal; completion of unfinished business.

2739. SEC. 98. The books, documents, records, papers and corporate seal of any city or town so discontinued shall be deposited with the county clerk of the county for safe keeping and reference in future; and all court records of any mayor or other officer shall be deposited with the nearest justice of the peace of the township, who shall have authority to execute and complete all unfinished business standing on the same.

Publication of discontinuance.

2740. SEC. 99. Whenever the incorporation of any city or town shall have been discontinued under the provisions of the four preceding sections, the clerk of the county wherein such corporation was situated shall pub-

lish such fact for thirty days in a county paper, if one is published in the county; if not, shall post three notices for the same length of time, and also certify the fact to the secretary of state.

Collection of tax and payment of indebtedness; disposition of surplus funds.

2741. SEC. 100. For the payment of its indebtedness, the corporation shall issue warrants in cases where there is no money in the treasury, and the county treasurer shall collect the tax which shall be levied to pay such indebtedness as hereinafter contemplated and prescribed as he collects other taxes, and pay the said warrants; and any surplus of this fund shall be passed over to the temporary school fund of the district where the same is levied.

Vacating of town site.

2742. SEC. 101. When any tract of land may have been, or may hereafter be filed upon, platted and recorded as a town site in accordance with the provisions of any act of congress or law of Colorado, and no town organization under the laws of Colorado shall have been perfected by the inhabitants residing thereon, or the owners thereof, the same may be vacated by consent of all such inhabitants or owners, and be disposed of as the said inhabitants or owners shall agree; *provided*, that a statement, signed and certified to by a majority of said inhabitants or voters, setting forth the fact of the vacation of such town site, be filed with the clerk of the county in which the same shall be situated.

Incorporation deemed legal if not questioned within one year from date of formation.

2743. SEC. 102. Any city or town which has been formed, organized or incorporated previous to the passage of this act, or which may hereafter be formed, organized or incorporated, and have exercised or shall exercise the rights and powers of a municipal corporation, and shall have in office a board of officers exercising the duties of their offices, and the legality of the formation or organization shall not have been or shall not be legally denied or questioned within one year from the date of its formation or organization, shall be deemed to be a legally incorporated city or town; and its formation, organization or incorporation, shall not thereafter be questioned.

Acts repealed.

2744. SEC. 103. Section 3 of article X, of chapter LXXXIV of the revised statutes of Colorado is hereby repealed.

2745. SEC. 104. All general laws providing for the organization and government of incorporated cities and towns in the state of Colorado are hereby repealed; *provided*, that the existence of cities and towns heretofore incorporated within the state, which shall choose to retain their present organization shall not be affected, nor the power or duties thereof in any manner changed or abridged, by any provisions of this act. Application of provisions of this act.

Approved, April 4, 1877.

CHAPTER CI.

UNIVERSITY OF COLORADO.

AN ACT CONCERNING THE UNIVERSITY OF COLORADO.

[Session Laws, 1874.]

2746. SECTION 1. Each county shall be entitled to send one pupil under the age of sixteen years to said university, tuition free; said pupil to be selected by competitive examination before the county superintendent of such county, and given to the highest scholarship. Who entitled to free tuition; how pupil to be selected.

AN ACT TO REPEAL CHAPTER EIGHTY-SEVEN OF THE REVISED STATUTES, AND TO PROVIDE FOR THE GOVERNMENT AND SUPPORT OF THE UNIVERSITY OF COLORADO.

Be it enacted by the General Assembly of the State of Colorado:

2747. SECTION 1. That chapter eight-seven of the revised statutes of Colorado is hereby repealed. Repeal.

2748. SEC. 2. The objects of the University of Colorado, established by law, near Boulder City, in Boulder county, and state of Colorado, shall be to provide the best and most efficient means of imparting to young men and women, on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The univer- Objects of the university

sity, so far as practicable, shall begin the course of study in its collegiate and scientific departments, at the points where the same are completed in high schools, and no student shall be admitted who has not previously completed the elementary studies in such branches as are taught in the common schools throughout the state.

Not a denominational institution

2749. SEC. 3. The university shall never be under the control of any religious or irreligious denomination or society whatever.

Regents; election and term of office; to be a body corporate.

2750 SEC. 4. The university shall be governed by a board of six regents, who shall be elected by the people of the state at a general election. The regents elected at the last general election shall at their first meeting be so classified by lot that two shall hold office for the term of two years, two for four years and two for six years, and hereafter there shall be elected every two years, two regents of the university, whose term of office shall be six years. The regents thus elected and their successors in office shall constitute a body corporate, to be known by the name and style of the regents of the university of Colorado.

Oath of regents.

2751. SEC. 5. The members of the board of regents shall, before entering upon their duties, take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States and of the state of Colorado, and that I will perform the duties of regent of the university of Colorado faithfully and to the best of my ability." Said oath or affirmation shall be filed in the office of the secretary of state.

Transfer of property held in trust for the university to the board of regents.

2752. SEC. 6. The board of trustees of the university of Colorado shall convey by deed to the said board of regents and their successors, in trust for said university, the title to all real estate which the said trustees now hold in trust for the said university, and shall transfer to the said regents all personal property, consisting of books, papers, money and credits or other property of whatever nature, which they now hold in trust for or belonging to the said university; whereupon the office and duties of said trustees shall cease and determine; and the tax provided for in section nineteen of this act shall not be levied or assessed

until the terms of this section are complied with and the title approved by the attorney general.

Vacancies in board of regents; how filled.

2753. SEC. 7. The governor of the state shall fill all vacancies that may occur in the board of regents, and the persons so appointed shall hold their offices until the next general election and until their successors elected thereat are duly qualified according to law.

Election and duties of president of the university

2754. SEC. 8. The regents of the university shall, at their first meeting or as soon thereafter as practicable, elect a president of the university, who shall hold his office until removed by the board for cause or until he shall resign the same. He shall be *ex officio* a member of the board with the privilege of speaking, but not of voting, except in cases of a tie. He shall preside at the meetings of the board and be the principal executive officer of the university and a member of the faculty thereof.

Meetings of the board of regents; when and where to be held.

2755. SEC. 9. The meetings of the board of regents shall be held at such times and places as the board may appoint; *provided*, not less than two meetings per annum shall be held at the university. The president of the board may call special meetings where he deems it expedient or special meetings may be called by any three members of the board, and a majority of the regents shall constitute a quorum and be competent for the transaction of business.

Supervision of the university, etc.

2756. SEC. 10. The board of regents shall have the general supervision of the university and the exclusive control and direction of all funds of and appropriations to the university.

Laws for the government of the university; appointment of professors and other officers and removals thereof.

2757. SEC. 11. The board of regents shall enact laws for the government of the university, and appoint the requisite number of professors and tutors, and all other officers, and shall determine the salaries of such officers, and the amount of fees to be paid for tuition. They shall remove any officer connected with the university when in their judgment the good of the institution requires it.

Course of instruction.

2758. SEC. 12. The university shall include a classical, philosophical, normal, scientific, law and such other departments, with such courses of instruction and elective studies as the board of regents may determine, and a department

of the physical sciences, and the board shall have authority to confer such degrees, and grant such diplomas and other marks of distinction, as are usually conferred and granted by other universities; and the board of regents is hereby authorized and required to established a preparatory department, which shall be under the control of said board of regents, as are the other departments of the university. Nothing in this section shall be so construed as to required the regents to establish the several departments, other than the normal and preparatory, as herein provided, until such time as in their judgment the wants and necessities of the people require it.

Cabinet of natural history, geological and mineral specimens.

2759. SEC. 13. All specimens of natural history and geological and mineralogical specimens, which may hereafter be collected by the state geologist of Colorado, appointed by the state to investigate its natural history, shall belong to and be the property of the state university, and shall form a part of its cabinet.

Election and duties of secretary of board of regents.

2760. SEC. 14. The board of regents shall elect a secretary, who shall hold his office during the pleasure of the board. He shall record all the proceedings of the board of regents in a well bound book, to be kept for that purpose, and carefully preserve all its books and papers. His books shall show how the permanent fund of the university has been invested; the amount of each kind of securities, if any, with the date thereof, and when due, the interest thereon, and when and where payable; the amount of each loan, if any, and when made and payable to whom, and how secured, and at what rate of interest, and when and where payable. The secretary shall countersign and register all warrants for money on the treasurer, and the treasurer shall not pay a warrant on him for money unless the same be drawn by the president and countersigned by the secretary.

Election and duties of treasurer of the university; amount and conditions of bond.

2761. SEC. 15. The board of regents shall elect a treasurer of the university who shall hold his office at the pleasure of the board. He shall keep a true and faithful account of all moneys received and paid out by him, and shall pay all warrants in the order of presentation; and before entering upon the duties of his office he shall take and sub-

scribe an oath that he will faithfully perform the duties of treasurer, and he shall also give a bond in the penalty of not less than twenty-five thousand dollars, conditioned for the faithful discharge of his duties as treasurer, and that he will at all times keep and render a true account of all moneys and other valuables received by him as such treasurer, and of the disposition he has made of the same, and that he will at all times be ready to discharge himself of the trust and to deliver up when required by said board all moneys, notes, bonds and other valuables intrusted to him, which bond shall have two or more good sureties and shall be approved as to its form and the sufficiency of its sureties by the board of regents, and also by the attorney general and secretary of state, who shall endorse their approval on the same, and it shall be filed in the office of the latter.

Compensation of secretary and treasurer.

2762. SEC. 16. The board of regents shall determine the compensation of the secretary and treasurer of the university, and the regents shall be ineligible to the office of treasurer.

Auditing and payment of claims against the university.

2763. SEC. 17. The board of regents shall audit all claims against the university, and the president shall draw all warrants upon the treasurer for approved claims; but before payment such warrants shall be countersigned by the secretary, who shall keep a specific and complete record of all matters involving the expenditure of money, which record shall be submitted to the board of regents at each regular meeting of the same.

In what manner the funds now belonging to the university may be used.

2764. SEC. 18. The board of regents is hereby authorized and empowered to use the funds now belonging to the university, including any balance of the appropriation of the territorial legislature, made by the act, approved February 11, A. D. 1876, in such manner and for such purposes as will in their judgment best subserve the interests of the institution.

Tax of one-fifth mill for support of university.

2765. SEC. 19. There shall be assessed upon all taxable property of the state in each year, beginning with the year A. D. 1877, for the support of the university of Colorado, one-fifth of one mill on each and every dollar of the assessed value of said taxable property, to be assessed and collected in the same manner, and at the same time, as is

now or may be, prescribed by law for the assessment and collection of state taxes.

Disposition of taxes collected.

2766. SEC. 20. The several county treasurers of the state shall keep a separate account of all taxes collected in pursuance of this act, and shall transmit the same to the state treasurer as a separate fund, and the auditor of state shall, upon the order of the president of the board of regents, countersigned by its secretary, draw his warrant upon said fund in favor of the treasurer of the university. The tax so collected and paid into the treasury of the university shall be for the support of the same, but if in any year the whole of the proceeds of said tax are not required for the ordinary purposes and expenses of the university, the said balance shall be added to and forever remain a part of the permanent fund of the said university.

Permanent fund.

Annual report of president to board of regents; what it shall set forth.

2767. SEC. 21. The president of the university shall make a report on the first day of September of each year to the board of regents, which shall exhibit the condition and progress of the institution in its several departments, the different courses of study pursued therein, the branches taught, the means and methods of instruction adopted, the number of students, with their names, classes and residences, and such other matters as he may deem proper to communicate.

Biennial report of regents to superintendent of public instruction; what it shall contain.

2768. SEC. 22. The board of regents shall, on the first day of October preceding each meeting of the general assembly, make a report to the superintendent of public instruction, which report, with that of the president, shall be embodied in the said superintendent's report to the general assembly. The report of the board of regents shall contain the number of professors, tutors and other officers, with the compensation of each; the condition of the university fund, and the income received therefrom and from all other sources; the amount of expenditures and the items thereof, and such other information and recommendations as may be expedient to lay before the general assembly.

Report of lands donated by the United States for university purposes.

2769. SEC. 23. The state board of land commissioners are hereby authorized and required to locate all the lands that have been donated by the United States to the state of

Colorado for the benefit of the university, and report to the next general assembly the number of acres so located, where situated, their character and estimated value.

2770. SEC. 24. None of the lands located as required in the preceding section of this act shall be sold except as may be provided by the general assembly, and whenever the said lands are sold the proceeds of such sale, being for the whole or a part of said lands, shall be paid over to the said regents by an order drawn by the president of the board, having been so authorized by the board of regents, upon the state treasurer, said order being first countersigned by the secretary of the university. Said money so paid shall be forever kept as a fund of the university, no part of the principal of which shall ever be expended for any purpose whatever, but the income of said fund may be used under the direction of the board of regents for the general purposes of the university, at the discretion of the board of regents.

Disposition of the proceeds of sale of lands.

2771. SEC. 25. The funds arising from the sale of lands belonging to the university shall be invested by the regents: first, in bonds of the state of Colorado, if such are to be had; but if not, then in the bonds of the United States, and said funds shall not be invested in any other manner or upon any other securities whatever. No funds of the university shall ever be, directly or indirectly, loaned to the president or any of the regents, professors, or other officers of the university.

How fund to be invested.

2772. SEC. 26. All donations of money, securities, or other property, shall be conveyed to the regents of the university, and invested as other funds of the university, and donations may be made to, and for the sole use of, any one of the departments of the university, and donations so made shall be kept a separate fund for the use of such department.

Disposition of donations.

2773. SEC. 27. The attorney general of the state shall be the legal adviser of the president and board of regents of the university, and he shall institute and prosecute or defend, all suits in behalf of the same.

Attorney general of state designated a legal adviser.

2774. SEC. 28. The board of regents are hereby prohibited from creating any debt as against the university, or

Expenses not to be incurred in excess of annual income.

in any manner incumbering the same, or of incurring any expense beyond their ability to pay from the annual income of the university, for the then current year.

Compensation of regents of the university.

2775. SEC. 29. The regents of the university shall severally receive as compensation four dollars for each day actually employed in the business of the university, including time necessarily spent in going to and from the meetings of the board, and mileage for traveling to and from the meetings of the board, which shall be at the same rate, and computed in the same manner as the mileage allowed to members of the general assembly, and they shall receive no other pay, fees or allowance whatever. The claims of the regents shall be submitted under oath to the auditor of state, who is hereby authorized to audit and allow the same for such attendance and mileage.

Emergency.

2776. SEC. 30. Inasmuch as it is important that the regents of the university should have power to act in the interests of the same, without delay, it is the opinion of the general assembly that an emergency exists as contemplated in section 19 of article 5 of the constitution, therefore this act shall be in force from and after its approval by the governor.

Approved, March 15, 1877.

CHAPTER CII.

WEIGHTS AND MEASURES.

[Revised Statutes, Chapter LXXXIX.]

What deemed to be lawful standard.

2777. SECTION 1. The weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, shall be deemed the lawful standard of weights and measures of the people of this state.

The ton defined.

2778. SEC. 2. The ton shall be twenty hundred pounds weight, avoirdupois.

2779. SEC. 3. Sixty pounds of wheat, fifty-six pounds of rye, fifty-six pounds of Indian corn, seventy pounds of corn in the ear, forty-eight pounds of barley, thirty-two

pounds of oats, sixty pounds of potatoes, sixty pounds of beans, sixty pounds of clover seed, forty-five pounds of timothy seed, forty-four pounds of hemp seed, fifty-two pounds of buckwheat, fourteen pounds of blue grass seed, fifty pounds of corn meal, fifty-seven pounds of onions, eighty pounds of salt, eighty pounds of lime, eighty pounds of mineral coal, respectively, shall be the standard weight of a bushel of each of the foregoing articles; and twenty-five hundred cubic inches of charcoal shall be the standard measure of a bushel; and a perch of stone in mason work shall be considered sixteen and one-half cubic feet; and for brick work measure, when laid up in wall, shall be counted twenty-two brick per cubic foot for foot wall, and fifteen brick for what is known as eight inch wall; a common brick to be eight and one-half inches in length, four and one-quarter inches in width and two and three-eights inches in thickness; and water sold by the inch by any individual or corporation, shall be measured as follows, to wit: every inch shall be considered equal to an inch square orifice under a five inch pressure, and a five inch pressure shall be from the top of the orifice of the box put into the banks of the ditch, to the surface of water; said boxes or any dot or aperture through which such water may be measured, shall in all cases be six inches perpendicular inside measurement, except boxes delivering less than twelve inches which may be square, with or without slides; all slides for the same shall move horizontally and not otherwise; and said box put into the banks of ditch shall have a descending grade from the water in ditch of not less than one-eighth of an inch to the foot.

The bushel defined.

Measurement of mason work and brick work.

Size of common brick.

Measurement of water.

2780. SEC. 4. It shall be the duty of the treasurer of this state to procure as soon as possible from the proper department of the federal government, all necessary weights and measures for the use of the state, and as soon as he shall receive them, to give public notice through two or more newspapers, for thirty days, to each and every board of county commissioners in the state, to obtain copies or duplicates of said weights and measures.

Procurement of standard weights and measures from the federal government.

2781. SEC. 5. That all venders and traders in goods, wares and merchandise, gold-dust and other articles of

Inspection, approval or condemnation of weights and measures.

traffic shall, within ninety days after the reception of the standards by said commissioners, have their balances, weights and measures compared with said standards of their respective counties, and approved and marked by the county inspector, and if the same are found to be correct, to be sealed with the name or initial letters of the county inscribed thereon, or condemned by him if found incorrect.

Appointment of inspectors of weights and measures.

2782. SEC. 6. That on the first regular meeting of the board of county commissioners in each county in this state, after the passage of this chapter, and thereafter annually, on the first regular monthly meeting of every year, said county commissioners shall appoint a fit and proper person, who shall be styled inspector of weights and measures, and shall give bond to the county for the faithful performance of the duties of his office, as said commissioners may direct.

Fees of inspector

2783. SEC. 7. That each county board shall make out a list of fees to be charged by said inspector, which fees when charged shall be recoverable in any court, as any other debt or account is recovered.

Furnishing tools, marks and brands for inspector.

2784. SEC. 8. That it shall be the duty of each county board, as aforesaid, to furnish to each inspector all the necessary tools, marks and brands, which he may require, to be paid for out of the county funds.

Punishment for weighing or measuring goods, merchandise, water, etc., not in accordance with this chapter.

2785. SEC. 9. All persons, for the purpose of weighing or measuring goods, wares, merchandise, water or other articles of traffic, actually sold by him, not in accordance with this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, may be imprisoned not exceeding one year, or fined not exceeding one thousand dollars, at the discretion of the court in which the conviction shall be obtained.

Complaint to magistrate by inspector.

2786. SEC. 10. Whenever it shall come to the knowledge of the inspector that any person within his county has violated any of the provisions of this chapter, it shall be his duty to enter a complaint against him before some magistrate having jurisdiction of the offense thereof, to the end that the offender may be punished and fined according to this chapter.

2787. SEC. 11. All fines imposed and collected for the violation of the provisions of this chapter, shall be paid into the county treasury for the use of the people of the county in which the offense was committed. Disposition of fines collected.

CHAPTER CIII.

WILLS, EXECUTORS AND ADMINISTRATORS.

[Revised Statutes, Chapter XC.]

OF WILLS AND THE PROBATE THEREOF.

2788. SECTION 1. Except as provided in the chapter concerning married women, every person aged twenty-one years, if a male, or eighteen years, if a female and not married, being of sound mind and memory, shall have power to devise all the estate, right, title and interest in possession, reversion or remainder, which he or she hath, or at the time of his or her death shall have, of, in and to any lands, tenements, hereditaments, annuities or rents charged upon or issuing out of them, or goods and chattels and personal estate of every description whatsoever, by will or testament; all persons of the age of seventeen years, and of sound mind and memory, shall have power to dispose of their personal estate, by will or testament. Who may devise real and personal estate, who personal estate only.

2789. SEC. 2. All wills, by which any lands, tenements, hereditaments, annuities or rents, are devised, shall be reduced to writing, and signed by the testator or testatrix, or by some one in his or her presence, and by his or her direction, and attested in the presence of the testator or testatrix, by two or more creditable witnesses. Reducing to writing; signature and attestation of wills.

2790. SEC. 3. A nuncupative will made and declared in the last sickness of the testator, in the presence of two witnesses of good character, called by the testator to attest the same, and by them reduced to writing within a reasonable time after the speaking thereof, and proved in the manner hereinafter mentioned, shall be good and available in law for the devising of personal estate. Nuncupative wills; how evidenced and established.

Revocation of wills; how to be made.

2791. SEC. 4. No will, other than a nuncupative will, shall be revoked otherwise than by burning, tearing or obliterating the same, by the testator himself, or in his presence by his direction and consent, or by some other will or codicil in writing, declaring the same, signed by the testator or testatrix in the presence of two or more witnesses, and by them attested in his or her presence, and no words spoken shall revoke or annul any will in writing, executed as aforesaid in due form of law.

Devise to attesting witness void unless will otherwise sufficiently attested; such witness competent to give testimony; if witness entitled as heir, his portion to be saved to him

2792. SEC. 5. If any beneficial devise, legacy or interest shall be made or given in any will, testament or codicil, to any person subscribing such will as a witness to the execution thereof, such devise, legacy or interest shall, as to such subscribing witness and all persons claiming under him, be null and void, unless such will be otherwise duly attested by a sufficient number of witnesses exclusive of such person, according to this chapter; and he or she shall be compellable to appear and give testimony on the residue of such will, in like manner as if no such devise or bequest had been made; but if such witness would have been entitled to any share of the testator's estate in case the will was not established, then so much of such share shall be saved to such witness as shall not exceed the value of the said devise or bequest made to him or her as aforesaid.

Attesting witness to whom a debt is secured by the will, competent as a witness.

2793. SEC. 6. If any lands, tenements or hereditaments shall be charged with any debts, by any will, and the creditor whose debt is so secured, shall attest the execution of the same, such creditor shall, notwithstanding, be admitted as a witness to the execution thereof.

Appointment of a debtor as executor of will not to release debt, unless so declared in will.

2794. SEC. 7. In no case hereafter, within this state, where any testator or testatrix shall, by his or her will, appoint his or her debtor to be his or her executor or executrix, shall such appointment operate as a release or extinguishment of any debt, due from such executor or executrix to such testator or testatrix, unless the testator or testatrix shall, in such will, expressly declare his or her intention to devise or release such debt, nor even in that case, unless the estate of such testator or testatrix is sufficient to

discharge the whole of his or her just debts, over and above the debt due from such executor or executrix.

Share of posthumous child of testator for whom no provision is made in will.

2795. SEC. 8. If, after making a last will, a child or children shall be born to any testator or testatrix, and no provision be made in such will for such child or children, the will shall not, on that account, be revoked; but unless it shall appear by such will that it was the intention of such testator or testatrix to disinherit such child or children, the devise and legacies by such will granted and given, shall be abated in equal proportions, to raise a portion for such child or children, equal to that which such child or children would have been entitled to receive out of the estate of such testator or testatrix, if he or she had died intestate.

In case of death of legatee, being the child or grandchild of testator, what disposition to be made of devise.

2796. SEC. 9. Whenever a devisee or legatee in any last will, being a child or grandchild of the testator or testatrix, shall die before such testator or testatrix, and no provision shall be made for such contingency, the issue, if any there be, of such devisee or legatee, shall take the estate devised or bequeathed, as the devisee or legatee would have done had he or she survived the testator or testatrix; and if there be no such issue, at the time of the death of the testator or testatrix, the estate disposed of by such devise or legacy shall be considered and treated in all respects as intestate estate.

Within what time will to be presented for probate.

2797. SEC. 10. The person having in possession any last will, shall, within ten days after the death of the testator or testatrix, or as soon thereafter as the decease of such testator or testatrix shall come to his knowledge, present the same to the county court of the proper county for probate.

Proceedings in case will is secreted or withheld; punishment therefor.

2798. SEC. 11. If any credible person shall file with the county court his complaint on oath, showing that any person hath in possession, or that there is good reason to believe that such person hath in possession, the last will of any person deceased, whereof such court hath jurisdiction to receive the probate, and secretes or wilfully withholds the same, such court shall issue an attachment against the person so alleged to withhold or secrete such will, and upon the arrest of the person accused, may examine him or her touching his or her having in possession such will, and

withholding the same, and may hear other evidence touching the same matter; and if it shall appear that such person hath in possession and wilfully withholds such will, he or she shall be punished as for a contempt of court, by fine not exceeding five hundred dollars, and by imprisonment until he or she will produce such will, or account therefor to the satisfaction of the court.

Punishment for altering, destroying or wilfully withholding will; liability to civil action for damages.

2799. SEC. 12. If any person to whom a will hath been or shall be delivered by the party making it, for safe custody as aforesaid, shall alter or destroy the same without the direction of the said party, or procure or willingly suffer the same to be done, or shall wilfully withhold it for the space of six months after the death of the testator or testatrix shall be known to him or her, the person so offending shall, on conviction thereof, be fined in not less than one hundred dollars nor more than one thousand dollars, and imprisoned in the penitentiary for a term not less than six months, nor exceeding five years, and such person so convicted shall, moreover, be liable in a civil action to any legatee named in such will, for any damages which he or she may have sustained by reason of such destruction, alteration or withholding.

In what county will to be proved

2800. SEC. 13. If any testator or testatrix shall have a mansion, house or known place of residence, his or her will shall be proved in the county court of the county wherein such mansion, house or place of residence shall be. If he or she has no place of residence, and lands be devised in his or her will, it shall be proved in the county court of the county wherein the lands lie, or in one of them where there shall be land in several different counties; and if he or she have no such known place of residence, and there be no lands devised in such will, the same may be proved either in the county where the testator or testatrix shall have died or that wherein his or her estate, or the greater part thereof, shall lie.

Who to be summoned to attend at probate of will; manner of serving citation.

2801. SEC. 14. Upon the production of any last will for probate, the court shall ascertain from the will and from such other satisfactory evidence as may be produced, the names and places of residence of the widow, or husband and heirs at law of the testator or testatrix, and who of

such heirs at law if any, are minors, and the names and places of residence of the guardians of such minors if any there be; and thereupon a citation shall issue to such widow or husband and heirs at law, or in the case of any minor, to his or her guardian and to the executor named in such will, if such will be presented for probate by some person other than such executor, requiring them and each of them to attend the probate of such will before the court, at a day to be named therein, not less than ten nor more than sixty days subsequent to the issuing of such citation, such citation to be served by reading the same to each person named therein, not less than five days before the day set for the hearing of such probate.

In what case guardian *ad litem* to be appointed to appear at probate of will.

2802. SEC. 15. If there be no guardian other than the testamentary guardian named in such will, appointed for any such minor, the court shall forthwith appoint some suitable and proper person as guardian *ad litem* to such minor, to appear at such probate on his or her behalf, and a notification of such appointment and a citation to appear at such probate, as in other cases, shall forthwith issue to the guardian so appointed.

Notice by publication to non-resident widow, husband or heir at law of testator

2803. SEC. 16. If it shall appear that any such widow or husband or heir at law of such testator or testatrix resides, or hath gone out of this state, or that his or her residence upon diligent inquiry cannot be found, the judge of the county court shall cause to be published for four successive weeks, in some weekly newspaper printed in this state, a notice addressed to such non-resident or person of unknown residence, or if the name of any such person be unknown, then to the unknown widow or husband, or heirs at law, as the case may be, of the testator or testatrix, setting forth the presentation of such will for probate, the name and place of residence of the person presenting the same, the name and place of residence of the testator or testatrix in such will, and the property devised as described therein, and requiring such widow or husband, or heirs at law to attend the probate of such will, at a day and place named in such notice, not less than thirty nor more than sixty days from the first publication thereof.

Proceedings after service of citation or publication of notice to appear at probate of will.

2804. SEC. 17. If upon the day set for the probate of such will, it shall appear that such citation hath been served upon the persons named therein, or in case the widow, husband or any heir at law of the testator or testatrix, be non-resident or out of the state, or of unknown residence, that due publication of such notice hath been made as required by the preceding section, the court may proceed to hear the probate of such will, or may continue the hearing thereof for good cause shown; but no such probate shall be heard unless the guardian of the minor heirs if any, appear, and if such guardian fail to appear and no cause be shown therefor, the court may forthwith appoint a guardian *ad litem* to any such minor, to appear in his or her behalf at the hearing of such proof.

Penalty for attesting witness failing to appear and testify.

2805. SEC. 18. It shall be the duty of each and every witness to any will, testament or codicil made and executed in this state as aforesaid, to be and appear before the county court to testify of and concerning the execution and validity of the same, and the said county court shall have power and authority to attach and punish by fine and and imprisonment or either, any witness who shall without a reasonable excuse, fail to appear, when duly summoned for the purpose aforesaid; *provided*, the said punishment by imprisonment shall in no case exceed twenty days, nor shall a greater fine be assessed for any such default than the sum of fifty dollars.

What proof required to entitle will to probate.

2806. SEC. 19. If, upon the hearing of such proof, it shall satisfactorily appear by the testimony of two or more of the subscribing witnesses to such will, that they were present and saw the testator sign such will, and attested the same at his request, or that he acknowledged the same to be his last will, and that they believe the testator to be of sound mind and memory at the time of signing and acknowledging the same, the court shall admit the same to probate and record: *provided*, that no proof of fraud, compulsion or other improper conduct be exhibited, which, in the opinion of the court, shall be deemed sufficient to invalidate or destroy the same, and every will, testament or codicil when thus proven, shall be recorded by the clerk of the county court, in a book to be provided by him for

that purpose, and shall be good and available in law, for the granting, conveying and assuring the lands, tenements and hereditaments, annuities, rents, goods and chattels therein and thereby given, granted and bequeathed.

What proof required in case of a nuncupative will.

2807. SEC. 20. Upon the probate of any nuncupative will, it must appear by the testimony of at least two credible, disinterested witnesses, who were present at the speaking and publishing thereof, that they were present and heard the testator pronounce the words, and that they believed him to be of sound mind and memory, and that he or she did, at the same time, desire the persons present, or some of them, to bear witness that such was his or her will or words to that effect, and that such will was made in the time of the last sickness of the testator or testatrix; and it being also proven by two disinterested witnesses, other than those hereinbefore mentioned, that the said will was committed to writing within a reasonable time after the death of the testator or testatrix, and no proof of fraud, compulsion or other improper conduct being exhibited, which, in the opinion of said court, shall be sufficient to invalidate or destroy the same, all such wills, when proven and authenticated as aforesaid, shall be recorded in like manner as other wills are directed to be recorded by this chapter.

How will may be admitted to probate in case of loss or destruction.

2808. SEC. 21. Whenever any will shall have been lost or destroyed and the fact of the execution thereof can be established, as hereinbefore provided, and the contents thereof are likewise shown by the testimony of two or more witnesses, the county court may admit the same to probate and record, as in other cases; *provided*, that in every such case the order admitting such will to probate, shall set forth the contents of the will at length, and the names of the witnesses by whom the same was proven, and such order shall be recorded in the record of wills; *and, provided, further*, that no will shall be admitted to probate upon proof of the contents thereof, unless it shall be proven that the same was in existence at the time of the death of the testator.

Testimony to be reduced to writing, subscribed, sworn to and preserved.

2809. SEC. 22. All testimony adduced upon the probate of any will shall be reduced to writing, subscribed by the witnesses respectively, and sworn to before the judge

of the county court, and shall be attached to such will or filed therewith, and preserved in the office of the clerk of the court.

Manner in which deposition of non-resident witness may be taken.

2810. SEC. 23. When the testimony of any non-resident witness or witnesses, residing out of the county wherein any will is sought to be admitted to probate, may be desired, touching the execution of such will, it shall be lawful for the party seeking to have such will admitted to probate or resisting the same, to cause the deposition of such witness to be taken in like manner as provided in the chapter concerning evidence and depositions; the county court may, in its discretion, direct the original of such will to be attached to any *dedimus potestatem* or commission, issued in such case; and the deposition of any such witness taken, certified and returned, according to law, shall be of like force and effect as if his testimony had been heard in the county court; *provided*, that before any such original will shall be suffered to be attached to any such commission, a copy thereof shall be made and examined, and certified by the county judge to be a true copy of such original, and until the return of such original, such copy shall be retained in the office of the county judge, in lieu of such original will; and if such will be admitted to probate, the same may, in case of the loss or destruction of the original thereof, be recorded from such certified copy.

Making probate of will in district court, when county judge is an attesting witness

2811. SEC. 24. When the judge of the county court may have become an attesting witness to any will required by this chapter to be proven before such court, and his testimony may be necessary to the proof of the same, in such case the probate of such will shall be made before the distrct court of the proper county, and the clerk of the district court shall issue the citation, and cause to be publised the notice required by this chapter; and if, by the order of the district court, such will be admitted to probate and record, the clerk of the district court shall certify the same, together with the testimony in support thereof, and a copy of such order of the district court, to the county court of such county, and the same shall be there recorded, and letters testamentary or of administration, shall issue thereon, as in other cases.

2812. SEC. 25. In all cases, where any one or more of the witnesses to any will shall die or remove to some distant country, unknown to the parties concerned, or cannot be found, so that his or her testimony cannot be procured, it shall be lawful for the county or other court having jurisdiction of the subject matter, to admit proof of the handwriting of any such deceased or absent witness, as aforesaid, and such other secondary evidence as is admissible in courts of justice to establish written contracts generally, in similar cases, and may thereupon proceed to record the same, as though such will had been proved by such subscribing witness or witnesses, in his, her, or their proper persons.

When proof of handwriting of deceased or absent witness or other secondary evidence admissable.

2813. SEC. 26. All original wills, after probate thereof, shall be recorded by the clerk of the county court, in a well bound book, to be provided by him for that purpose, and shall remain and be preserved in the office of the county judge.

Record and preservation of original wills.

2814. SEC. 27. Where any last will, of or concerning estates within this state, hath been or shall be admitted to probate before any court or tribunal of any state or territory of the United States, beyond the limits of this state, authorized by the laws of such state or territory to admit the same to probate, the record of such court or tribunal in the matter, certified in the manner required by the act of congress in such cases made and provided, shall entitle such will to probate and record in this state, without further proof of the execution thereof, and without notice to the heirs, widow or husband of such testator or testatrix, and letters testamentary or of administration, may issue thereon as in other cases.

Wills proved and recorded in other states; how admitted to probate here.

2815. SEC. 28. In all actions wherein the execution or contents of any last will may be brought in question, the record of the probate of such will, or an exemplified copy of such record, shall be conclusive proof of the execution and contents thereof, both as against the persons summoned and appearing at the probate thereof, and as against all other persons; *provided*, that any heir at law, or other person interested to contest the said will, who was not summoned by actual service of process, and who did

Record of probate of will conclusive evidence; contest of will by heir at law who did not appear at probate of same; rights of persons under disability; what weight to be given testimony taken at probate of such will.

not appear at the probate of such will, may at any time within two years after the admitting of such will to probate, appear and by his or her bill in equity, in the district court of the county wherein such will was admitted to probate, or of the county to which such county is attached for judicial purposes, contest the validity of such will; and thereupon, an issue at law shall be directed, whether the writing in question be the last will of the testator or testatrix or not, which issue shall be tried by a jury according to the practice in courts of chancery in similar cases; but if no such person shall appear within the time aforesaid, the probate, as aforesaid, shall be forever binding and conclusive on all the parties concerned saving to infants, *femmes covert*, persons absent from the state, or *non compos mentis*, the like period after the removal of their respective disabilities; and in all such trials by jury, as aforesaid, the recorded testimony of the witnesses examined at the probate of such will may be used as evidence, and shall have such weight as the jury shall think it may deserve.

Revocation of probate and repayment of legacies in case of later will, etc.

2816. SEC. 29. If by the decree of the district court upon such verdict, or by the probate of any later will in the same manner as herein provided, it shall be established that such writing so originally admitted to probate is not the last will of the decedent, the probate of such writing shall forthwith be revoked, and the legacies if any, which have been paid by the executor or administrator appointed thereunder, shall be repaid to the executor or administrator subsequently appointed; upon the production of any such later will for probate the devisees in the will originally proved shall be summoned and made defendants.

What evidence competent in case of appeal from order of county court.

2817. SEC. 30. When any last will shall have been admitted to probate or probate thereof shall have been refused, and an appeal shall be taken from the order of the county court in the premises, it shall be lawful for the party seeking to have the said will admitted to probate, to support the same upon trial of the said appeal by any evidence which would be competent in case probate of said will had been allowed, and the same were afterwards contested under this chapter; and the said will having been so proved upon said appeal, shall be admitted to probate,

liable however, to be subsequently contested as is provided in case of wills admitted to probate in the first instance.

OF THE APPOINTMENT AND QUALIFICATION OF EXECUTORS.

2818. SEC. 31. All persons named as executors in any will shall, after the same shall be proven and admitted to record as before directed, be entitled to letters testamentary thereon; and where there shall be no executors named in such will, or the executor named therein shall die, refuse to act, or be otherwise disqualified, letters of administration with the will annexed, shall be granted to such person or persons as may be entitled thereto; in all which cases copies of such wills, testaments or codicils shall go out with the letters.

To whom letters testamentary or of administration to issue.

2819. SEC. 32. It shall be the duty of the executor or executors of the last will and testament of any person deceased, knowing of his, her, or their being so named and appointed, within thirty days next after the decease of the testator or testatrix, to cause such will to be proved and recorded in the proper county, as aforesaid, or to present such will and declare his, her or their refusal to accept of the executorship, and every such executor or executrix so neglecting his trust and duty as aforesaid, without just excuse for such delay to the satisfaction of the county court, shall forfeit the sum of twenty dollars per month from and after the expiration of the said term of thirty days until he shall cause probate of said will to be made, or present the same as aforesaid, to be recovered by action of debt by any person who will sue for the same, in any court having jurisdiction thereof.

Failure of executor to cause will to be proven or to declare refusal of executorship, within thirty days; penalty for.

2820. SEC. 33. Upon the refusal of the executor or executors to qualify, or if it shall appear that such executor or executors is or are under any disqualification as hereinafter mentioned, the county court shall commit the administration of the estate of the deceased, with a copy of the will annexed, unto the widow or next of kin to the deceased, and upon their refusal, neglect or incapacity to act, may grant such administration to one or more of the principal creditors, and on their refusal to such other person or persons as the court shall think fit.

To whom administration granted if executor disqualified or refuse to act.

Who disqualified to act as executors.

2821. SEC. 34. If any person, named as an executor or executrix in any last will and testament, shall be, at the time when administration ought to be granted, under the age of seventeen years, or of unsound mind, or convicted of any crime rendering him or her infamous, or shall be a married woman, letters of administration or testamentary, as the case may require, may be granted, in the same manner as if such person had not been named as such in such will (unless in the case of a married woman, her husband shall give bond with her as aforesaid, with two or more sufficient securities to be filed as aforesaid, for her faithful performance as such executrix); and on all questions touching such disqualifications, the county court shall receive the like testimony as would be admissible in any court of law or equity in similar cases.

Executor of an executor.

2822. SEC. 35. The executor of an executor shall not, in consequence thereof, be executor of the first testator.

Power of an executor before probate of will.

2823. SEC. 36. The power of the executor or executrix over the testator's estate, before probate of the will and obtaining letters testamentary, shall extend to the burial of the deceased, the payment of necessary funeral charges, and the taking care of the estate; but in all such cases, if the will shall be rejected, when presented for probate, and such executor thereby never qualify, he shall in no wise be liable as an executor of his own wrong, unless upon refusal to deliver up the estate to the person or persons authorized to receive the same; *provided*, this section shall not be construed to exempt any such person, claiming to be executor, as aforesaid, for any waste or misapplication of the estate.

Issuing of letters in case of two or more executors, and one or more of whom refuses to act or is disqualified.

2824. SEC. 37. When two or more executors are appointed in and by the same will, and one or more of the persons named as such shall die, refuse to take upon himself or herself such executorship, or be disqualified, letters testamentary shall be granted thereon to the other person or persons so named, not renouncing, as aforesaid, and not disqualified.

Oath of executor or administrator with will annexed.

2825. SEC. 38. Every executor or administrator with the will annexed, at the time of proving the will and granting letters testamentary or of administration, as afore-

said, shall take and subscribe, before the county court, the following oath, to wit:

I do swear (or affirm) that this writing contains the true last will and testament of the within named A. B., deceased, so far as I know or believe, and that I will well and truly execute the same, by paying first the debts, and then the legacies mentioned therein, as far as his goods and chattels will thereunto extend, and the law charges me, and that I will make a true and perfect inventory of all such goods and chattels, rights and credits, as may come to my hands or knowledge, belonging to the estate of the said deceased, and render a fair and just account of my executorship, when thereunto required by law, to the best of my knowledge and ability. So help me God.

Form of bond to be given by executors unless will otherwise direct, and by administrators with will annexed.

2826. SEC. 39. All executors to be appointed, unless the testator or testatrix shall otherwise direct in the will, and all administrators with the will annexed, shall, before entering upon the duties of their executorship and administrations, respectively, enter into bond, with good and sufficient security, to be approved by the county court, in a sum double the value of the estate, and payable to the people of the state of Colorado, for the use of the parties interested, in following form, to wit:

Know all men by these presents, that we, A. B., C. D. and E. F., of the county of ——, and state of Colorado, are held and firmly bound unto the people of the state of Colorado in the penal sum of —— dollars, current money of the United States, to which payment well and truly to be made and performed, we, and each of us, bind ourselves, our heirs, executors, and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals, this ——day of ——, A. D 18—.

The condition of the above obligation is such, that if the above bounden A. B., executor of the last will and testament of G. H., deceased (or administrator with the will annexed, as the case may be), do make, or cause to be made, a true and

perfect inventory of all and singular the goods and chattels, rights and credits, land, tenements and hereditaments, and the rents and profits issuing out of the same, of the said deceased, which have or shall come to the hands, possession or knowledge of the said A. B., or into the possession of any other person for him, and the same so made, do exhibit in the county court for the said county of ——, as required by law, and also make and render a fair and just account of his actings and doings as such executor (or administrator) to said court when thereunto lawfully required, and to well and truly fulfill the duties enjoined on him, in and by said will, and shall moreover pay and deliver, to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereunto extend, according to the value thereof and as the law shall charge him, and shall, in general, do all other acts which may, from time to time, be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue.

Which said bond shall be signed and sealed by the said executor (or administrator) and his securities, and attested by the county judge, and filed in his office.

In what cases courts may require bond of executors, although will otherwise direct.

2827. SEC. 40. When any testator or testatrix shall leave visible estate, more than sufficient to pay all his or her debts, and by will shall direct that his or her executors shall not be obliged to give security, in that case no security shall be required; but if the county court shall see cause, from its own knowledge or the suggestion of creditors or legatees, to suspect the executors of fraud, or that the personal estate will not be sufficient to discharge all the debts, such court may require security, and the same shall be given before letters testamentary shall be granted, notwithstanding any directions to the contrary in said will.

In what manner estate not devised shall be distributed.

2828. SEC 41. All such estate, both real and personal, as is not devised or bequeathed in the last will of any person, shall be distributed in the same manner as the estate of an intestate; but in all such cases, the executor or executors, administrator or administrators, with the will annexed, shall have the preference in administering on the same.

2829. SEC. 42. All letters testamentary to be hereafter issued to executors, shall be in the following form, to wit:

Form of letters testamentary or of administration, with the will annexed.

STATE OF COLORADO, }
———— COUNTY, } SS.

The people of the state of Colorado, to all to whom these presents shall come, Greeting:

Know ye, that whereas, A. B., late of the county of ——, and state of Colorado, died on or about the —— day of ———, A. D., 18——, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving, at the time of his death, property in this state, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same, and inasmuch as it appears that C. D. has been appointed executor, in and by the said last will and testament, to execute the same, and to the end that the said property may be preserved for those who shall appear to have legal right or interest therein, and that said will may be executed according to the request of the said testator, we do hereby authorize him, the said C. D., as such executor, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his decease, in whosoever hands and possession the same may be found, in this state, and well and truly to perform and fulfill all such duties as may be enjoined upon him by the said will, so far as there shall be property, and the law charges him, and, in general, to do and perform all other acts which now are, or hereafter may be, required of him by law.

Letters of administration, with the will annexed, shall conform to the foregoing form as nearly as may be, and all letters testamentary and of administration shall be under the seal of the court and attested and signed as other process.

OF THE APPOINTMENT AND QUALIFICATION OF ADMINISTRATORS.

2830. SEC. 43. Letters of administration shall issue out of the county court of the county wherein the intestate resided next previous to his death, or if the intestate

From what court letters of administration shall issue.

had no residence in this state, then out of the county court of the county wherein his personal estate or the greater part thereof may be found; or if he leave no personal estate, then out of the county court of the county wherein his real estate or the greater part thereof is situate, and administration of the estate shall be had therein.

To whom letters of administration shall be granted; what proof to be made; appointment of administrator *pro tempore*.

2831. SEC. 44. Administration shall be granted to the husband upon the goods and chattels of his wife, and to the widow or next of kin to the intestate, or some of them if they will accept the same and are not disqualified, but in all cases the widow shall have the preference; but if no widow or other relative of the intestate shall apply within twenty days from the death of such intestate, the county court may grant administration to any creditor or creditors who shall apply for the same; and in case no such application be made by any creditor or creditors within ten days next ensuing the lapse of said term of twenty days as aforesaid, administration may be granted to any person or persons whom the judge of probate may think will best manage the estate; *provided*, that no administration shall in any case be granted until satisfactory proof be made before the county court, to whom application for that purpose shall be made, that the person on whose estate letters of administration are requested is dead, and died intestate so far as they have knowledge and belief; *provided, also*, that the county court may in the exercise of its discretion, appoint some person to act as administrator until the person rightfully entitled to administration shall apply for the same, and the person so appointed shall give bond in the same manner, and during the time that he shall act as administrator he shall perform the duties prescribed by law in relation to other administrators.

Issuing of letters of administration to person not entitled to the same as husband, widow, etc; what proof required.

2832. SEC. 45. Upon every application for letters of administration upon the goods and chattels, rights and credits of any person dying intestate, by any person not entitled to the same as husband, widow, next of kin, creditor or creditors or public administrator, the county court to which such application shall be made shall, before the granting of letters of administration to any such applicant or applicants, cause such applicant or applicants to pro-

duce satisfactory evidence that the person or persons having the preference have relinquished their prior right thereto; *provided*, such application shall be made within the space of thirty days next ensuing the death of any such intestate as last aforesaid; but if such application be made after the expiration of thirty days it shall not be necessary to make such proof, and the county court may proceed to grant letters to such applicant or applicants, or any other person or persons, as he may think fit.

Form of letters of administration.

2833. SEC. 46. The form of letters of administration to be issued in this state shall, as near as may be, be as follows, to-wit:

STATE OF COLORADO, }
COUNTY OF ——— } ss.

The people of the state of Colorado, to all to whom these presents shall come, greeting:

Know ye, that whereas, A. B., of the county of ——, and state of Colorado, died intestate as it is said, on or about the —— day of ——, A. D., 18—, having at the time of his decease personal property in this state which may be lost, destroyed or diminished in value if speedy care be not taken of the same, to the end therefore, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint C. D., of the county of ——, and state of Colorado, administrator of all and singular the goods and chattels, rights and credits which were of the said A. B. at the time of his decease, with full power and authority to secure and collect the said property and debts wheresoever the same may be found in this state, and in general to do and perform all other acts which now or hereafter may be required of him by law.

How tested, signed, etc.; form of letters of administration *de bonis non*, etc.

2834. SEC. 47. All letters of administration shall be tested and signed as other process, in the name of the county judge, and be issued under the seal of the court. And in all cases where letters of administration *de bonis non*, or letters of administration to any public administrator, shall hereafter be issued by any county court, the same

shall be issued in conformity with the foregoing forms, as nearly as may be, taking care to make the necessary variations, additions or omissions, to suit each particular case.

Oath of administrators.

2835. SEC. 48. The county court shall in all cases, upon granting administration of the goods and chattels, rights and credits, of every person dying intestate, require the administrator or administrators (public administrators excepted) to take and subscribe the following oath, to wit:

I do solemnly swear (or affirm) that I will well and truly administer all and singular the goods and chattels, rights, credits and effects of A. B., deceased, and pay all just claims and charges against his estate, so far as his goods, chattels and effects shall extend, and the law charges me, and that I will do all other acts required of me by law, to the best of my knowledge and ability. So help me God.

Which said oath shall be reduced to writing, subscribed by the person taking the same before the said county judge and filed in his office.

Form of bond of administrators.

2836. SEC. 49. Each and every administrator shall, before entering upon the duties of his office, enter into bonds with good and sufficient security, to be approved by the county court, in a sum double the value of the estate; the formal part of the bond shall be as heretofore prescribed, with a condition thereto in the followining form, to wit:

The condition of the above obligation is such, that if the said A. B., administrator of all and singular the goods and chattels, rights and credits of J. K., deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased, which shall come to the hands, possession or knowledge of him, the said A. B., as such administrator or to the hands of any person or persons for him, and the same, so made, do exhibit or cause to be exhibited, in the county court for the said county of ——, agreeably to law, and such goods and chattels, rights and credits, do well and truly administer, according to law, and all the rest of the said goods and chattels, rights and credits which shall be found remaining upon the account of the said admistra-

tor, the same being first examined and allowed by the county court, shall deliver and pay unto such person or persons, respectively, as may be legally entitled thereto, and further, do make a just and true account of all his actings and doings therein, when thereunto required by the said court, and if it shall hereafter appear that any last will and testament was made by the deceased, and the same be proved in court, and letters testamentary or of administration be obtained thereon, and the said A. B., do in such case, on being required thereto, render and deliver up the letters of administration granted to him as aforesaid, and and shall, in general, do and perform all other acts which may at any time be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue.

Which said bond shall be signed and sealed by the said administrator and his securities, attested by the county judge, and filed in his office, and in all cases where bonds shall be taken from any administrator *de bonis non*, or in any other cases, where a form shall not be prescribed in this chapter, the same shall be made as nearly as may be in conformity with the form above prescribed, with variations to suit each particular case.

Administrator of an executor or administrator.

2837. SEC. 50. The administrator of an executor or an administrator, shall enter into a sufficient bond, with approved security, to cover the damages that might accrue by a forfeiture of the same, and shall have power, and he is hereby required, to make final settlement of the unsettled estate, under all the liabilities and with all the privileges of an administrator *de bonis non*.

OF ADMINISTRATORS TO COLLECT.

In what cases administrator appointed to collect and preserve an estate.

2838. SEC. 51. During any contest in relation to the probate of any will, before the same shall be recorded or until a will which may have once existed but shall be destroyed or concealed, shall be established, and the substance thereof committed to record, with the proof thereupon taken, or during any contest in regard to the right of executorship or to administer the estate of any person

dying, either testate or intestate, or whenever any other contingency may happen which shall be productive of great delay before letters testamentary or of administration can be issued upon the estate of such testator or intestate, to the person or persons having legal preference to the same, the county court may appoint any person or persons as administrator to collect and preserve the estate of any such decedent, until probate of his will or until administration of his estate be granted, taking bond and security for collecting the estate, making an inventory thereof, and safe-keeping and delivering up the same, when thereunto required by the said court, to the proper executors or administrators, whenever they shall be admitted and quailfied as such.

Form of letters to collect and preserve an estate.

2839. SEC. 52. The form of the letters to be granted to the person or persons so appointed to collect and preserve the estate of the decedent, as aforesaid, shall be as follows, viz.:

The people of the state of Colorado, to all to whom these presents shall come, Greeting:

Know ye, that whereas, A. B., late of the county of ——, and state of Colorado, deceased, as it is said, had, at his (or her) decease, personal property within this state, the administration whereof cannot be immediately granted to the persons by law entitled thereto, but which, if speedy care be not taken, may be lost, destroyed or diminished; to the end therefore that the same may be preserved, for those who shall appear to have a legal right or interest therein, we do hereby request and authorize C. D., (and E. F., if two shall be appointed,) of the county of ——, and state aforesaid, to collect and secure the said property, wheresoever the same may be in the state, whether it be goods, chattels, rights or credits, and to make, or cause to be made, a true and perfect inventory thereof, and to exhibit the same, with all convenient speed, to the county court of the said county of ——, together with a reasonable account of his (or their) collection, acts and doings, in the premises aforesaid.

2840. SEC. 53. Before letters of administration to collect shall be granted, as aforesaid, the person or persons so appointed, as aforesaid, shall give bond, with good and sufficient security, to be approved by the county court, payable to the people of the state of Colorado, for the use of the parties interested, and conditioned as follows: Form of bond of administrator to collect.

The condition of the above obligation is such, that if the above bounden C. D. shall well and honestly discharge the duties appertaining to his appointment as administrator to collect, of the estate of A. B., late of the county of ——, deceased, and shall make or cause to be made, a true and perfect inventory of all such goods, chattels, debts and credits of the said deceased, as shall come to his (or her) possession or knowledge, and the same, in due time, return to the office of the county judge of the proper county, and shall also deliver to the person or persons authorized by the said county court as executors or administrators, to receive the same, all such goods, chattels and personal estate as shall come to his or her possession, as aforesaid, and shall, in general, perform such other duties as shall be required of him (or her) by law, then the above obligation to be void, otherwise to remain in full force and virtue.

Which bond shall be signed and sealed by such administrator and his (or her) securities, attested by the county judge, and filed in his office.

2841. SEC. 54. Before any administrator to collect, shall enter upon the duties of his appointment as aforesaid, he or she shall take and subscribe the following oath or affirmation, before the county court, to wit: Oath of administrator to collect.

I do solemnly swear (or affirm) that I will well and honestly discharge the trust reposed in me as collector, or administrator, to collect of the estate of A. B., deceased, according to the tenor and effect of the letters granted to me by the county court of the said county of ———, to the best of my knowledge and ability. So help me God.

Which said oath shall be reduced to writing, subscribed by the party making it, and filed in the office of the county judge, before whom the same shall be taken.

Powers, duties and compensation of administrators to collect.

2842. SEC. 55. Every collector appointed as aforesaid, shall have power to collect the goods, chattels and debts of the said deceased according to the tenor of the said letters, and to secure the same at such reasonable and necessary expense as shall be allowed by the county court, and the said court may authorize him or her, immediately after the inventory and appraisement of such estate, to sell such as shall be perishable, or may be injured by delay, and to account for the same; and for the whole trouble incurred by such collector, the county court may allow such commission on the amount of said personal estate as shall be actually collected and delivered to the proper executor or administrator, as aforesaid, as said court may deem just and reasonable: *Provided*, the same shall not exceed six per cent. on the amount stated in such inventory or bill of appraisement as aforesaid.

Commencement of suits and payment of debts against estate, by such administrator.

2843. SEC. 56. Every collector appointed as aforesaid, shall have power to commence suits for debts due to the decedent, and to release the same on payment thereof, and no such suit shall abate by the revocation of the letters of such administrator to collect, or collector, but the same may be prosecuted to a final decision by the executor or executors, administrator or administrators, to whom letters testamentary or of administration may be granted as aforesaid. And every such collector shall have power to pay, out of any funds in his hand belonging to the estate of the decedent, any debts which may be allowed by the county court against such estate, and which the county court shall, by order entered of record, direct such collector to pay.

When powers of collector to cease; penalty for refusal to deliver property on hand.

2844. SEC. 57. On the granting of letters testamentary, or of administration, as aforesaid, the power of any such collector, as may have been appointed, shall cease; and it shall be his duty to deliver on demand, all the property and money of the deceased, which shall have come to his hands or possession (saving such commission as may be allowed by the court as aforesaid, and saving all such sums of money as may have been paid to creditors of the estate by order of the county court,) to the person or persons obtaining such letters; and in case any such collector or administrator shall refuse or neglect to deliver over such

property and money to his successor, when legal application shall be made therefor, such administrator so neglecting or refusing, shall be liable to pay twenty per cent. over and above the amount of all such property or money as shall come to his hands, by virtue of his said administration; and shall, moreover, forfeit all claim to any commission for collecting and preserving the estate; which said twenty per cent., together with all damages that may be sustained by reason of the breach of any bond, which may at any time be given by any such collector, may be sued for and recovered by any person or persons to whom letters testamentary or of administration may be granted as aforesaid, for the use of the estate of such decedent.

OF PUBLIC ADMINISTRATORS.

2845. SEC. 58. The governor of the state shall appoint in each county a suitable person to be the public administrator, for such county, who shall hold his office for two years, and until his successor shall be appointed and qualified.

Appointment of public administrator.

2846. SEC. 59. In all cases where any person shall die, seized or possessed of any estate within this state, or having any right or interest therein, and shall have no relative or creditor within this state who will administer upon such deceased person's estate, it shall be the duty of the judge of probate, upon the application of any person interested therein, to commit the administration of such estate to the public administrator of the proper county; and such public administrator may be made a party to any suit or proceeding in law or in equity, and shall to all intents and purposes, be liable as the personal representative of such deceased person.

In what cases administration granted to public administrator

2847. SEC. 60. Each and every public administrator who may at any time be appointed as aforesaid, shall, before entering upon the duties of his office, take and subscribe the following oath, to-wit:

Oath of public administrator.

I, A. B., public administrator in and for the county of ——, and state of Colorado, do solemnly swear or affirm that I will well and truly perform all such duties as may

be required of me by law, to the best of my knowledge and ability. So help me God.

Which said oath shall be taken before the county judge of the proper county, reduced to writing and signed by the public administrator, and filed in the office of the said county judge.

Bond of public administrator.

2848. SEC. 61. It shall be the duty of the county judge upon grating letters of administration to public administrators, to take bond in the same manner as other administrators; and if any public administrator shall neglect or refuse to take out letters of administration and give bond as aforesaid, within twenty days after it becomes his duty to do so, his office shall be deemed vacant; and upon the certificate of the county judge of that fact, the governor shall fill such vacancy.

In what case letters granted to public administrator may be revoked.

2849. SEC. 62. In all cases where administration shall have been granted to any public administrator as aforesaid, and it shall afterwards appear that there is a widow, or next of kin, or creditor or creditors of the deceased entitled to the preference of administration by this chapter, it shall be the duty of the court to revoke the letters granted to such public administrator and to grant the same to such widow, next of kin, creditor or creditors as shall or may be entitled thereto; *provided*, that application shall be made to the county court of the proper county by such person or persons, within six months after the letters shall have been granted to the public administrator as aforesaid, saving to such administrator in all cases, all such sum or sums of money as may be due to him from such estate on account of commissions and expenses, due to and incurred by him in the management of said estate.

Disposition of balance remaining in hands of public administrator after settlement of estate.

2850. SEC. 63. If any balance of any such intestate's estate as may at any time be committed to any public administrator as aforesaid, shall remain in the hands of such administrator after all just debts and charges against such estate shall have been fully paid, which shall have come to the knowledge of such public administrator for one year after the administration of such estate shall have been committed to him as aforesaid, such administrator shall

cause the amount thereof, with the name of the intestate and the time of his or her decease, to be published in some one of the public newspapers printed in the state for eight weeks successively, notifying all persons having claims or demands against such estate to exhibit the same, together with the evidence in support thereof, before the county court in the proper county within six months after the date of such notice, or the same shall be forever barred; and if no such claim be presented for payment or distribution within the said time of six months as aforesaid, such balance shall be paid into the public treasury of said county, and the county shall be answerable for the same without interest, to such person or person as shall thereafter appear to be legally entitled to the same if any such shall ever appear.

Taking charge of an estate by public administrator until letters granted to person entitled thereto.

2851. SEC. 64. Upon the death of any person intestate not leaving a widow, or next of kin, or creditors, within any county in this state, it shall and may be lawful for the public administrator of the county wherein such person may have died, as aforesaid, or wherein the goods and chattels, rights and credits of such decedent shall be, in case such person shall have been a non-resident, to take such measures as he may deem proper, for the protecting and securing the property and effects of such intestate from waste or embezzlement, until administration thereon shall be granted to the person entitled thereto, as aforesaid, the expenses whereof shall be paid to such public administrator, upon the allowance of the county court in preference to all other demands against such estate, funeral expenses excepted.

OF THE REMOVAL AND RESIGNATION OF EXECUTORS AND ADMINISTRATORS.

Revocation of letters of administration upon discovery of will.

2852. SEC. 65. If at any time after letters of administration have been granted, a will of the deceased shall be produced, and probate thereon granted according to law, such letters of administration shall be revoked and repealed, and letters testamentary or of administration, with will annexed, shall be granted in the same manner as if the former letters had not been obtained.

Granting of administration after revocation of letters testamentary.

2853. SEC. 66. In all cases where a will, testament or codicil, shall have been proved and letters granted thereon, as aforesaid, and such will shall thereafter be set aside or annulled by due course of law, the letters granted thereon shall be revoked and repealed, and administration granted of the goods and chattels unadministered.

Power of court to revoke letters testamentary or of administration; proceedings in such cases.

2854. SEC. 67. The county court shall have power to revoke and repeal all letters testamentary or of administration, granted to persons who shall become insane, lunatic or of unsound mind, habitual drunkards, who may be convicted of an infamous crime, who waste or mismanage the estate, or who conduct themselves in such a manner as to endanger their co-executors, co-administrators or securities; in all which cases, the court shall summon the person or persons charged to be in default, or disqualified, as aforesaid, to show cause why such revocation should not be made; and when made, the reason therefor shall be stated at large upon the record, and other letters granted to the next person or persons who shall, according to law, be entitled to the same.

Proceedings where one or more of several executors die, are removed or become disqualified; removal of executor or administrator not to discharge his bond; power of administrators *de bonis non*.

2855. SEC. 68. Where the letters of one of several executors or administrators are revoked, or one or more of the executors or administrators shall die, or become disqualified, the county court may, in its discretion, join others in their stead or place, and require additional bonds from such new administrator, or administrators, or the survivor or survivors of such as shall not have their powers revoked, shall proceed to manage the estate, and in case the letters of all of them shall be revoked, or all of said executors or administrators shall depart this life before final settlement and distribution of the estate shall have been made, administration with the will annexed, or as the case may require, shall be granted to the person next entitled thereto, and in all cases where such executor or administrator shall have his letters revoked, as aforesaid, he shall nevertheless, be liable on his bond, to such subsequent administrator or administrators or to any other person or persons aggrieved, for any mismanagement of the estate committed to his care, as aforesaid. And such subsequent administrator or administrators may have and maintain actions of trover,

debt, detinue, account, and on the case, against such former executor or administrator, for all such goods, chattels, rights and credits as shall have come to the possession of him or her, and which shall be withheld, or may have been wasted, embezzled or misapplied, and no satisfaction made for the same.

Additional security required from executor or administrator from time to time.

2856. SEC. 69. If any county court shall grant letters testamentary or of administration of the estate of any person deceased, without taking good security for the same, as aforesaid, or if the security as taken shall afterwards become insufficent, it shall be lawful for the said court on application of any person entitled to distribution, a creditor, or otherwise interested in such estate, to require such executor or administrator to give other sufficient security, and in default thereof, the letters testamentary or of administration shall be revoked, and administration granted to the person entitled to the same, according to the rules hereinbefore prescribed in the case of administrators *de bonis non;* and all acts done and performed according to law, by the executor or administrator, whose letters testamentary or of administration may be revoked as aforesaid, prior to such revocation, shall be valid and effectual.

Counter security or new bond; when it may be required; proceedings in such case

2857. SEC. 70. When securities for executors or administrators, or their representatives, may conceive themselves in danger of suffering by the mismanagement of such executors or administrators, and petition the county court for relief in writing, setting forth the cause of such apprehension, the said court shall examine such petition, and if the court shall deem the cause therein stated and set forth, sufficient to entitle such petitioner or petitioners to relief, if true, he shall summon such executor or administrator to show cause against such petition, and may thereupon dismiss the same or direct such executor or administrator, in his discretion, either to give good counter security, to save such petitioner or petitioners harmlesss, or to give new bond in the like penalty as the first, and such new bond shall have relation back to the time of granting letters testamentary or of administration, and shall be as effectual in every respect, as if the same had been executed before such letters had been granted; and upon refusal or

neglect to give bond *de novo*, or counter security, as aforesaid, the letters granted to such executor or administrator may be revoked, and letters of administration with the will annexed, or *de bonis non*, granted thereon as aforesaid.

Form of new bond of executor or administrator.

2858. SEC. 71. In all cases where a new bond shall be required to be given by an executor or administrator, as aforesaid, the formal part of the bond shall be as heretofore prescribed, with a condition thereto in the following form, to wit:

The condition of the above obligation is such, that whereas the above bounden A. B., executor of the last will and testament of J. K., deceased (or administrator of the goods and chattels, rights and credits, of J. K., deceased,) has heretofore executed a bond payable to the people of the state of Colorado, and conditioned for the discharge of his duties as executor (or administrator) as aforesaid, which said bond bears date on the —— day of ——, A. D. 18—.

And whereas, by an order of the county court, made on the —— day of ——, A. D. 18—, other bond and security has been required of the said executor (or administrator):

Now, therefore, if the said executor (or administrator) shall well and truly have kept and performed, and shall well and truly keep and perform, the condition of the bond first given as aforesaid, in all respects according to law, and shall in all respects have performed, and shall continue to perform, the duties of his office aforesaid, then this obligation to be void, otherwise to remain in full force and virtue.

Which bond shall be signed, sealed, attested and filed, in all other respects as aforesaid.

Revocation of letters procured through false representations.

2859. SEC. 72. Courts of probate shall have power, and they are hereby required, to revoke letters of administration, in all cases, where the same have been or hereafter may be granted to any person upon the false and fraudulent pretense of being a creditor of the estate upon which administration has been or may be granted, or upon any other false pretense whatever.

2860. SEC. 73. In all controversies arising under the preceding section, the court shall proceed to hear and determine the same, and if it shall appear that such letters were fraudulently obtained by such administrator, the court shall revoke the same, and give judgment against the administrator for all costs of suit, and issue execution therefor as in other cases.

Judgment for costs against administrator obtaining letters through false representation.

2861. SEC. 74. In all cases where any county court shall hereafter revoke any letters of administration, it shall proceed to grant the same to such person or persons as may be entitled thereto.

In case of revocation, other letters to be granted to persons entitled.

2862. SEC. 75. Any executor or executrix, administrator or admistratrix or guardian testamentary, or by appointment of a county court, may resign in writing to the county court having settlement or adjustment of his or her accounts, his, her or their office or offices; and when such resignation is accepted by such court, the person or persons so resigning shall be discharged from the further exercise of his, her or their office or offices; *provided, always*, that the acceptance of such resignation shall be by a written order of said court, and shall not be construed to exonerate any executor or executrix, administrator or administratrix or guardian, or his or their securities, from liabilities incurred previous to such acceptance; and no such resignation shall be accepted until such executor or executrix, administrator or administratrix or guardian, shall have given notice of such intention by publication as required in cases of final settlement, and shall make and render a complete settlement of all matters in his hands as such administrator or administratrix, executor or executrix or guardian, up to the time of his or her resignation, and shall deliver into court all evidences of title, property, papers, money and *choses* in action, in his or her hands; *provided, also*, that if the county court shall enter an order dispensing with such notice, then, and in such case, no such notice shall be given.

Resignation of executor, administrator or guardian.

OF THE ADMINISTRATION OF THE PERSONAL ESTATE.

2863. SEC. 76. In every case wherein letters testamentary, of administration or of collection, are granted, it

Inventory of estate by executor or administrator.

shall be the duty of executor or administrator to make out a full and perfect inventory of all such real and personal estate pertaining to the estate of his testator or intestate, as shall come to his hands, possession or knowledge, whether the same shall consist in lands, tenements, hereditaments, annuities or rents, or in goods and chattels, rights and credits, describing such real estate by its numbers or other reasonably certain description, and particularly specifying the amount and value thereof, and the title by which the same is held, if known, specifying, also, the amount of money on hand, the kind, number, or amount and value of the several articles of personal property, the debts appearing to be due or to become due, to such testator or intestate, the date of each contract, bond, bill, note or record by which the same are due, the rate of interest thereon, and whether such debt be separate, doubtful or desperate, which said inventory shall be returned to the office of the county judge within one month from the date of the said letters testamentary, or of administration, as aforesaid.

Appraisement of personal estate; form of warrant; fees of county judge.

2864. SEC. 77. On granting any letters testamentary, or of administration, as aforesaid, a warrant or warrants shall issue, under the seal of the court of probate, authorizing three persons of discretion, not related to the deceased, nor interested in the administration of the estate, to appraise the goods, chattels, and personal estate of the deceased, known to them, or to be shown by the executor or administrator, which warrant shall be in the following form, to wit:

The people of the state of Colorado, to A. B., C. D. and E. F., of the county of ———, *and state of Colorado, greeting:*

This is to authorize you, jointly, to appraise the goods chattels and personal estate of J. K., late of the county of ———, and state of Colorado, deceased, so far as the same shall come to your sight and knowledge, each of you having first taken the oath (or affirmation) hereto annexed, a certificate whereof you are to return, annexed to an appraisement bill of said goods, chattels and personal estate, by you appraised, in dollars and cents; and in the said bill of appraisement, you are to set down, in a column or col-

umns opposite to each article appraised, the value thereof.

Witness, L. M., county judge for the said county of ——, at his office in ——, this —— day of ——, A. D. 18—.

L. M., County Judge. [L. S.]

For said warrant the said county judge shall receive the sum of twenty-five cents and no more; and on the death, refusal to act or neglect of any such appraiser, another in form as aforesaid, may forthwith issue in its stead.

Oath of appraiser; appraisement, how made

2865. SEC. 78. The appraisers, before they proceed to the appraisement of the estate, shall take the following oath or affirmation, to be annexed to or indorsed on the warrant of appraisement as aforesaid, before any person authorized to administer an oath:

You, and each of you, do solemnly swear (or affirm) that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of J. K., deceased, so far as the same shall come to your sight and knowledge, and that you will in all respects, perform your duty as appraisers, to the best of your skill and judgment.

After which the said appraisers shall proceed as conveniently as may be to the discharge of their duty, and shall set down each article, with the value thereof in dollars and cents, as aforesaid; all the valuations shall be set down on the right hand side of the paper, in one or more columns, in figures, opposite to their respective articles of property, and the contents of each column shall be cast up and set at the foot of each, respectively.

What to be done with bill of appraisement.

2866. SEC. 79. When the bill of appraisement shall be completed, the appraisers shall certify the same, under their hands and seals, with a certificate of the oath (or affirmation) taken by them thereunto annexed, and shall deliver the same into the hands of the executor or administrator, to be by him returned into the office of the county judge, within one month from the date of his letters testamentary, or of administration.

2867. SEC. 80. Inventories and bills of appraisement, and authenticated copies thereof, may be given in evidence

Effect of inventories and bills of appraisement as evidence.

in any suit by or against the executor or administrator; but shall not be conclusive, for or against him, if any other testimony be given that the estate was really worth, or was *bona fide* sold for, more or less than the appraised value thereof.

Compensation of appraisers.

2868. SEC. 81. Each and every appraiser appointed under this act shall be entitled to the sum of three dollars per day for each day's necessary attendance in making all such appraisements and bills thereof, as aforesaid, to be allowed by the county court and paid upon its order by the executor or administrator, and charged to the account of the estate.

Selection by widow of portion of estate allotted to her; penalty for refusal or neglect of executor or administrator to set apart portion of widow.

2869. SEC. 82. When the estate of any testator or intestate shall have been appraised, and the same shall be ascertained to be entirely solvent and free from debt or encumbrance, or where there shall be a sufficiency of money or assets in the hands of the executor to pay such debts, independent of the property mentioned in such inventory and bill of appraisement, it shall be lawful for the widow to make her election, whether she will take that part of the personal estate to which she may be entitled, by right of dower or otherwise, out of the articles mentioned in such bill of appraisement, according to the appraised value thereof or the amount thereof in money, whenever the same shall be sold and the money collected therefor; or she may take a part in property and a part in money, as she may prefer; and in all such cases it shall be the duty of the executor or administrator to notify the widow as soon as such appraisement shall be made, and to set apart for her such article or articles of property not exceeding the amount to which she may be entitled, as she may prefer or select, within thirty days after written application shall be made for that purpose by such widow; and if any such executor or administrator shall neglect or refuse to comply with the foregoing requisition, when application shall be made for that purpose, he shall forfeit and pay for the use of such widow, the sum of twenty dollars per month for each month's delay to set apart said property so selected after the said term of thirty days shall have elapsed, to be recovered in the name of the people of the

state of Colorado, for the use of such widow, in any court having jurisdiction of the same.

Additional estate discovered after inventory.

2870. SEC. 83. Whenever property of any kind, or assets, shall come to the possession or knowledge of any executor or administrator, which shall not have been mentioned and included in the inventory and bill of appraisement, as aforesaid, an account or inventory of the same shall be returned to the office of the county judge, and a warrant shall issue for the appraisement of the same, if personal estate, in the same manner as provided in regard to original appraisements, within ten days thereafter.

Proceedings in case of concealment or embezzlement of property of deceased person.

2871. SEC. 84. If any executor or administrator, or other person interested in the estate, shall state upon oath to any county court that he believes that any person has in his possession, or has concealed, or embezzled, any goods, chattels, moneys or effects, books of accounts, papers or any evidences of debt whatever, or titles to land, belonging to any deceased person, the court shall require such person to appear before it, by citation, and may examine him on oath, touching the same, and if such person shall refuse to answer such interrogatories as may be propounded to him, by the court or person interested as aforesaid, or shall refuse to deliver up such property or effects as aforesaid, upon requisition being made for that purpose, by an order of the said county court, such court may commit such person to jail, until he shall comply with the order of the court therein.

Sale of personal estate of decedent by executor or administrator. (Amendment 1876.)

2872. SEC. 85. The executor or administrator shall, as soon as convenient, after making the inventory and appraisement, as hereinbefore directed, sell at public or private sale, as the county court shall order and direct, all the goods and chattels of the testator or intestate, not reserved to the widow as aforesaid, and also excepting specific legacies and bequests, when the estate is sufficient to discharge the debts over and above such specific legacies and bequests, and in case of public sale, three weeks' notice of the time and place of such sale shall be given by publication in some newspaper, or by posting notices in three public places in the county, as the court shall direct; and such sale may be made for cash or upon credit, as the county

court shall direct; *provided*, that if such sale shall be made upon credit, security to be approved by the court, shall be taken by the executor or administrator from the purchaser or purchasers; *and, provided, further*, that if any testator shall direct that his estate shall not be sold, the same shall be preserved in kind, and distributed accordingly, unless such sale should become absolutely necessary for the payment of the debts and charges against the estate of such testator; *and, provided, further*, that the executor or administrator of any estate, may, except in cases where it is necessary to sell, to pay the debts or bequests of the decedent, dispense with a sale of the personal property, or any part thereof, and may distribute the same in kind to the heirs, or devises, under order of the court, as now provided by law, for the distribution of estate.

In what manner growing crops to be disposed of.

2873. SEC. 86. If any executor or administrator shall be of opinion that it would be of advantage to the estate of the testator or intestate to dispose of the crops growing at the time of his decease, the same shall be inventoried, appraised and sold at the same time and in the same manner as is directed in the preceding section; but if such executor or administrator shall believe that it would be of more advantage to the estate to grow and mature the same previous to such sale, he shall be authorized so to do; and the proceeds of such crop, after deducting all necessary expenses for cultivating, gathering, and making sale of the same, shall be assets in the hands of such executor or administrator, and subject to the payment of debts and legacies, and to distribution, as aforesaid.

Compounding and sale of desperate claims.

2874. SEC. 87. Upon the suggestion of an executor or administrator that any claim, debt or demand, whatever, belonging to the estate in his hands, and to be administered, is desperate for any cause, the county court may order the same to be compounded or sold for such sum as the court may, in its discretion, determine upon: *Provided*, that no debt or demand shall be settled, compounded or sold, for a less sum of money than the face thereof, except in cases where the party from whom the sum is due is insolvent, or of doubtful solvency, which fact shall be ascertained and

entered of record by the court before entering an order for the settlement or sale of such debt or demand.

Removal of property of decedent from state by executor or administrator prohibited

2875. SEC. 88. No executor or administrator shall, under any pretense whatever, remove any property whatsoever, wherewith such administrator or executor may be charged by virtue of his letters, beyond the limits of this state; and in case any such executor or administrator shall remove such property, it shall be the duty of the county court forthwith to revoke his letters, and letters of administration on said estate shall issue to the next person or persons entitled, as in other cases.

Employment of clerks and crier of sale, hours of sale.

2876. SEC. 89. In all public sales of property made in pursuance of this chapter, the executor or administrator may employ the necessary clerks and a crier, to be allowed such compensation as the county court may deem reasonable. All such sales shall be made between the hours of ten o'clock in the forenoon and five o'clock of the afternoon of each day.

Bills of sale.

2877. SEC. 90. All executors and administrators shall, immediately after making such sales as aforesaid, make a bill of the sales of said estate, describing particularly each article of property sold, to whom sold, and at what price, which sale bill when made, and certified by the clerk and crier of such sale as true and correct, shall be returned into the office of the county judge, in the like manner as is required in the case of inventories and appraisements.

Books of account of decedent.

2878. SEC. 91. The books of account of any deceased person shall be subject to the inspection of all persons interested therein.

With what estate executors, etc., chargeable.

2879. SEC. 92. Executors and administrators shall be chargeable with so much of the estate, whether real, personal or mixed, or the proceeds thereof, of their testator or intestate, as they, after due and proper diligence, shall recover and receive.

Liability of widow to heir, for waste of estate.

2880. SEC. 93. If the widow commit waste in the lands and tenements, or the personal estate of the deceased, she shall be liable to an action by the heir or devisee, or his or her guardian, if of real estate, or by the executor or administrator, if of personal estate, and if she marry a second husband, he shall be answerable with her in damages

for any waste committed by her, as aforesaid, before such second marriage, or by the husband himself after such marriage.

OF THE REAL ESTATE.

Validity of sales of real estate made pursuant to power in will.

2881. SEC. 94. In all cases where power is or may be given in any will, to sell or dispose of any real estate, or any interest therein, and the same be sold or disposed of in the manner and by the persons appointed in such will, the sales shall be good and valid; and when one or more executor shall depart this life before such sales be made, the survivor or survivors shall have the same power, and their sales shall be good and valid, as though they all joined in such sale.

Sales by administrator in case of death of executor or no executor named in will.

2882. SEC. 95. Whenever any testator shall, by his last will, direct that his real estate, or any of it, be sold, or otherwise disposed of, for the payment of his debts, or for any other purpose, and no executor be named therein, or if the executor named therein refuse such office, or be removed or die, the administrator, with the will annexed, or *de bonis non*, may sell, convey and dispose of such real estate, in accordance with the provisions of such will, in the same manner, and with like effect, as the executor named in such will, and duly qualified, might have done.

Payment of debts and legacies from real estate, if personal estate insufficient.

2883. SEC. 96. Whenever after inventory and appraisement thereof, as herein provided, it shall appear that the personal estate of any decedent is insufficient to discharge the just debts allowed against his or her estate, and the legacies charged thereon, resort may be had to the real estate, and the same may be sold, mortgaged or leased by the administrator, or in cases where no power to that end is contained in the will, by the executor, upon the or order of the court as follows:

Petition for sale of real estate; what to set forth; who shall be made defendant.

2884. SEC. 97. The executor or administrator shall present to the county court out of which letters testamentary or of administration issued, or to the district court of the same county, or of the county to which such county is attached for judicial purposes, his petition, setting forth the amount and value of the personal estate, according to the inventory and appraisment thereof, and if sale has been

made of such personal estate, the amount received from such sale, the amount of debts and claims allowed against the estate, and the amount still existing and not allowed, so far as the same may be known, the amount of legacies, if any, for the payment of which resort must be had to the real estate, and describing particularly the whole of the real estate whereof the decedent died seized, or in or to which he or she, at the time of his or her decease had any interest, claim or right, the nature of his or her claim, right or title, the nature and value of the several parcels of such real estate, respectively, and if the same or any thereof are encumbered, the nature and amount of such encumbrance, and pray the aid of the court in the premises. To such petition the widow or husband, and heirs at law, of such decedent, and the devisees of such real estate if the same or any thereof, be devised in the will of the decedent, and the guardians of such of them as may be minors, shall be made defendants.

Issue of summons.

2885. SEC. 98. Upon the filing of such petition a summons shall issue against the defendants therein named, directed to the sheriff of the county, requiring the defendants to appear and answer the petition, upon the return day of such summons.

When summons returnable.

2886. SEC. 99. Every such summons shall be made returnable on the first day of the term of the court next succeeding the date thereof.

Issue of summons to different counties.

2887. SEC. 100. If there are several defendants residing in different counties, a summons shall issue to each of such counties, as in other like cases.

How service of summons made.

2888. SEC. 101. Service of such summons shall be by reading to each of the defendants therein named; in the case of minor defendants, service of summons may be made upon the guardian only.

Publication in case of non-resident or unknown defendants.

2889. SEC. 102. If the executor or administrator shall file with the clerk of such district court, or the county judge, according as such petition may be in the district or county court, an affidavit that any defendant resides, or hath gone, out of the state or cannot be found so that process cannot be served upon him, such judge or clerk shall cause to be published for four weeks successively, in some

daily or weekly newspaper printed within the county wherein the petition is pending, or if there be no newspaper printed within such county, then in some newspaper printed in the state, a notice to such defendant of the filing of such petition, the time at which the writ is returnable, or if such publication be made after the return day of the writ, the time to which such petition is continued, and requiring such defendant to appear and answer the petition on such return day, or on such day to which the petition is continued; but such affidavit and notice shall not dispense with the issuing of summons, or the usual effort to make service thereof.

Continuance in case of insufficient service or publication; issue of *alias* summons.

2890. SEC. 103. If such summons be not served at least ten days before the return day thereof, or if in cases where notice, by publication is permitted by the last preceding section, the first publication of such notice be not at least sixty days before the day named therein for the defendants' appearance, the cause shall stand continued until the next succeeding term of the court: *alias* summons may issue, from time to time, as to any defendant not served.

Form of proceedings upon petition.

2891. SEC. 104. The form of proceeding upon such petition shall, as nearly as practicable, conform to the proceedings of courts of chancery, in like cases, and the issue shall be found, heard and determined, as provided by the chapter concerning practice in chancery; *provided*, that trial by jury shall in no such case be allowed; *and, provided, further*, that no defendant shall be allowed to put in issue the decedent's title or interest to or in the lands named in the petition.

Appointment of guardian *ad litem* for minor defendants.

2892. SEC. 105. If it shall appear that any defendant is a minor, and hath no guardian resident in this state, or if such guardian, if any, fail or refuse to appear to resist such petition, the court shall appoint a guardian *ad litem*, to such minor, to appear in his or her behalf, and resist such petition.

What person other than defendant may appear and answer petition.

2893. SEC. 106. Any person interested in the estate as a creditor or otherwise, and not made defendant, may appear and answer such petition, and show cause against the prayer thereof at any time before final decree.

2894. SEC. 107. Upon the hearing of the cause, upon the issue or issues formed, or where the petition may be taken for confessed, it shall be the duty of the court to hear proofs touching the matters alleged in the petition, or in issue by the pleadings subsequent thereto; and if by such proofs it shall appear that the personal estate will be insufficient to discharge the just debts and claims allowed against the estate, and the legacies charged thereon, and expenses of administration, the court shall determine, as nearly as may be, the amount of such deficiency, and may thereupon direct that the real estate, or such portion thereof as may be necessary, be sold or leased, by the executor or administrator, or that the executor or administrator raise money for the discharge of such debts and legacies, by mortgage, of all or any part of such real estate; or that any part of the real estate be sold, and that the residue or any thereof, be either mortgaged, or leased, according as may seem most for the interest of all persons interested in the estate, due regard being had to the rights of all.

Decree for sale; mortgage or lease of real estate; in what case to be made.

2895. SEC. 108. If the court shall direct a sale of such real estate or any part thereof, the order shall specify the part to be sold, and whether such sale shall be for cash or upon credit, and if upon credit, the length thereof, and the rate of interest to be paid by the purchaser pending the same; if any such sale be upon a credit, the executor or administrator shall, before the delivery of a conveyance, take from the purchaser or purchasers, a mortgage of the premises sold, to secure the due payment of the purchase-money, unless the order of the court direct that other security be taken in lieu thereof.

What the decree shall specify.

2896. SEC. 109. If the court shall direct that the executor or administrator raise money by mortgage of any of the real estate, the order shall specify a rate of interest not exceeding which, and a period for not less than which such loan shall be made.

Specification of decree in case of mortgage of estate.

2897. SEC. 110. If the court shall direct the executor or administrator to lease the real estate, or any part thereof, the order shall specify for what length of time and upon what rents and conditions the lease may be made; *provided*,

Specification of decree in case of lease of estate.

that no such lease shall be made for a term exceeding five years.

Specification of decree in case mortgage or lease impracticable.

2898. SEC. 111. The court may direct in the alternative, that if the executor or administrator cannot, upon mortgage of the real estate, borrow the sum of money necessary, at a rate of interest, and for a length of time to be named, or cannot lease the same at the rents and upon the conditions named, that then a sale thereof, or of any part thereof, shall be made.

Time, place and notice of sale.

2899. SEC. 112. Every sale of the real estate of any decedent, in pursuance of this chapter, shall be made at such place, and upon such notice, as the court may direct; but no such sale shall be valid, unless the time, place and terms thereof, be first advertised for at least twenty days, in the same manner as required in the case of sales of real estate by the sheriff, upon execution; nor unless such sale be in conformity with the order of the court.

Conveyance, mortgage or lease of estate; what shall be recited in, and effect of.

2900. SEC. 113. In every such case, the conveyance, mortgage or lease, by the executor or administrator, shall recite, in substance, the order of the court; and every such conveyance, mortgage or lease, made in conformity with the order of the court, shall have the same effect to convey, encumber and demise the estate which the decedent, in his or her lifetime had in the premises, as if made by such decedent, in his or her lifetime; but no final conveyance of any estate so sold shall be made until the approval of the proceedings of the executor or administrator by the court, as hereinafter mentioned.

Report of sale under decree by executor or administrator.

2901. SEC. 114. At the next term of the court succeeding any such sale, mortgage or leasing, the executor or administrator shall present to the court a report of his proceedings in the premises, accompanying such report in case a sale hath been made with the advertisement thereof, and proof of the publication of the same, and also with his affidavit that he did not directly or indirectly purchase any part of the real estate sold, and hath no interest direct or indirect in any such purchase.

Execution of conveyance in case of approval of report.

2902. SEC. 115. If such report be approved by the court, the executor or administrator shall execute his conveyance of the premises sold to the purchaser or purchasers thereof, as hereinbefore provided.

2903. SEC. 116. If such report of sale be not approved the sale shall be void, and the court may order a re-sale of the same premises. In case report be not approved.

2904. SEC. 117. All moneys arising from any such sale, mortgaging or leasing of the real estate, shall be assets in the hands of the executor or administrator for the payment of debts and legacies, and shall be administered under the direction of the county court, in the same manner as moneys arising from the sale of personal property. Moneys arising from sale, mortgage or lease; how to be administered.

2905. SEC. 118. If any decedent shall before his death, have purchased real estate and shall die before completing the payment therefor, intestate, or without devising the same or providing by will for the payment of the purchase money thereon due, or to accrue, and the completion of such payment would be beneficial to the heirs or legatees of the deceased and not injurious to creditors, the executor or administrator may with the approval of the county court, complete such payment out of the proceeds of the personal estate. In what case payment for real estate purchased by decedent before death, may be completed.

2906. SEC. 119. Such real estate shall, whether payment therefor be made from the personal estate or not, be disposed of in the same manner as other real estate. Disposal of such real estate.

2907. SEC. 120. The court may in such case, if it should seem most advantageous to the persons interested in the estate, direct that the executor or administrator relinquish the interest and estate of the deceased, upon such terms as he may with the approval of the court, agree upon. Relinquishment of interest in such real estate.

2908. SEC. 121. If any decedent shall have left lands encumbered by mortgage, judgment, execution, sale or other lien, and shall not have devised the same or provided by will for the redemption thereof, the county court shall have power if it shall appear to be for the interest of the heirs, legatees and creditors, to order the executor or administrator to redeem the same out of the proceeds of the personal estate, or upon petition as provided by sections ninety-seven to one hundred and sixteen of this chapter, may direct that other lands be sold to redeem the same. Redemption of encumbered lands of decedent.

Completion of sale or conveyance, in case of death, removal or resignation of executor, etc., before execution of deed.

2909. SEC. 122. When any executor or administrator shall remove from this state, or resign, or die, after the sale of any real estate of his testator or intestate in pursuance hereof, and before executing a deed therefor, or after an order for the sale, mortgage or leasing of any such real estate hath been made in pursuance hereof, and before the final execution of such order, the court may direct that the survivor or successor of such executor or administrator, execute such conveyance, mortgage or lease, or complete the execution of such order.

Release of mortgaged premises by executor, etc. of mortgagee.

2910. SEC. 123. When the mortgagee of any lands or tenements shall die leaving minor heirs, the executors or administrators of such mortgagee shall be, and they are hereby authorized, on receiving the amount due the estate of such deceased mortgagee, to release to the mortgagor the legal title of the said mortgaged premises, and such deed of release shall be valid.

Proceedings in case of insolvency of estate.

2911. SEC. 124. Whenever any estate is found to be insolvent it shall be so entered of record, and the court of probate may make all necessary orders to coerce the executor or administrator to make seasonable application for the sale of the real estate, or for authority to mortgage or lease the same in conformity herewith.

OF THE ALLOWACE OF DEMANDS AND THE SETTLEMENT OF ESTATES.

Classification of demands against estate of decedent; payment of taxes; in what case demand of creditors not exhibited within one year may be paid; otherwise to be barred.

2912. SEC. 125. All demands against the estate of any testator or intestate, shall be divided into classes in manner following, to wit:

First—All funeral and other expenses attending the last sickness shall compose the first class.

Second—All expenses of proving the will and taking out letters testamentary or of administration and settlement of the estate, and the physician's bill in the last illness of the deceased, shall compose the second class.

Third—Where any executor, administrator or guardian has received money, as such, his executor or administrator shall pay out of his estate the amount thus received and not accounted for, which shall compose the third class.

Fourth—All other debts and demands of whatsoever kind, without regard to quality or dignity, which shall be exhibited within one year from the granting of letters, as aforesaid, shall compose the fourth class; *provided*, that whenever it may be necessary so to do, in order to preserve the estate, real or personal, for the benefit of the heirs, devisees and creditors, the executor or administrator may pay any taxes due thereon, to the state, or any city, county or town, and shall be allowed such payment in his account; and all demands not exhibited within one year, as aforesaid, shall be forever barred, unless such creditor shall find other estate of the deceased not inventoried or accounted for by the executor or administrator; in which case his claim shall be paid *pro rata* out of such subsequently discovered estate, saving, however, to *femmes covert*, persons of unsound mind, or imprisoned, or beyond seas, the term of one year after their respective disabilities be removed, to exhibit their claim.

Publication of notice of settlement of claims in county court.

2913. SEC. 126. It shall be the duty of each and every administrator or executor, to fix on a certain day or days, at a term of the county court, within six months from the time of his being qualified as such administrator or executor, for the settling and adjusting all claims against such decedent, and give notice thereof by publication for four successive weeks, prior thereto, in some daily or weekly newspaper printed within the county wherein such administration is had, or if there be no such newspaper, by posting such notice in five public places within such county, requesting all persons having claims and demands against the estate, to present the same to the court on the day or days named in such notice for adjustment.

Presentation of claims against estate; how to be proven.

2914. SEC. 127. All persons having claims against the estate may present the same on the day named in such notice, and the court may proceed to hear and determine the same, or if objection be made thereto by the executor, administrator, or any party interested in the estate, or if cause be shown by the party presenting such claim, may continue the hearing thereof; if no objection be made to any such claim by the administrator, widow, guardian, heirs or others interested in said estate, the claimant shall be

permitted to swear that such claim is just and unpaid, after allowing all just credits; and, if objections be made to such claim, the account shall be adjudicated, as is required in other cases; *provided*, that estate shall be answerable for the costs on the claims filed at or before said term, but not after.

Presentation of claim at any term of court; what notice to be given by claimant.

2915. SEC. 128. Persons having claims against estates, upon giving the executor or administrator ten days' notice of the time they intend to present the same, with a copy of the account, or instrument of writing, whereon such claim is founded, may exhibit such claims against the estate, at any term of the court subsequent to the issuing of letters testamentary or of administration.

Courts may require oath of claimant in addition to other proofs.

2916. SEC. 129. No person making a claim against the estate of any testator or intestate shall be permitted to prove the same by his or her own oath, except in cases specified in section one hundred and twenty-seven hereof; but said court may, in its discretion, before giving judgment against any executor or administrator, require the claimant to make oath that such claim is just and unpaid; *provided*, that the amount of such judgment shall not be increased upon the testimony of the claimant; *and, provided, further*, that except as provided in section one hundred and twenty-seven of this chapter, every demand shall be proven in the same manner and by like evidence as would be required in like cases before the district court.

Presentation and allowance of claims not due.

2917. SEC. 130. Any creditor whose debt or claim against the estate is not due, may nevertheless present the same for allowance and settlement; and the same shall be allowed to the extent of the sum due thereon for principal and interest at the date of such allowance.

Manner of exhibiting claims.

2918. SEC. 131. The manner of exhibiting claims against estates shall be by filing in the county court the account, or instrument of writing, or an exemplification of the record whereon such claim is founded. Formal pleading shall, in no case, be required; but the issue shall be formed, heard and determined in the same manner as in actions before justices of the peace.

2919. SEC. 132. When any executor or administrator shall have any demand against his testator's or intestate's

estate, he shall be required to file his demand with the county court as other persons, and the court shall appoint some discreet person to appear and manage the defense for the estate, and upon the final hearing said court shall allow said demand, or such part thereof as shall be legally established, or reject the same as to said court shall appear just; should an executor or administrator appeal in such case, the county court shall appoint some person to defend as aforesaid.

Proceedings when executor or administrator has claims against estate.

2920. SEC. 133. When a claim shall be filed or suit brought against any such executor or administrator, and it shall appear on trial that such claimant or plaintiff is indebted to such executor or administrator as such, it shall be lawful for such county court to give judgment therefor, and issue an execution or other final process.

Judgment in cases where claimant appears to be indebted to executor, etc.

2921. SEC. 134. The county court shall make an entry of record of every demand allowed against any estate, and shall file all papers relating to the same; such entry of allowance shall have the force and effect of a judgment.

Record of demand allowed; effect of such record.

2922. SEC. 135. The county court shall class all demands allowed against any estate at the time of the allowance thereof, and such demands shall be paid in their order, commencing with the first class, and when the estate is insufficient to pay the whole of the demands, such demands in any one class shall be paid *pro rata*, whether the same shall be due by judgment, writing obligatory or otherwise, except in such cases as shall be herein excepted; and when any executor or administrator shall pay any claim before the same is allowed as aforesaid, said court shall require such executor or administrator to establish the validity of such claim by such evidence as is required in other case before the same is classed and he credited therewith.

Classification of demands at time of allowance, to be paid in their order; *pro rata* payments; claim paid before allowance to be proven before allowance to executor, etc.

2923. SEC. 136. Creditors who may bring their actions in the district court, at any time within one year from the issuing of letters testamentary or of administration, shall share in the proceeds of the estate in the same manner as if such demand had been exhibited in the county court within the same time.

Actions brought in district court on claims against estates.

How judgment obtained in court other than county court to be classed and paid.

2924. SEC. 137. Upon the recovery of judgment at law in any court other than the county court, against any executor or administrator, for a demand due from his testator or intestate, no execution shall be issued thereon, but the party recovering such judgment shall cause a transcript of the record of the judgment entry to be filed in the county court, and the same shall be classed and paid as other demands are.

Accounts of executors, etc., when and where to be exhibited; what to set forth.

2925. SEC. 138. All executors and administrators shall exhibit accounts of their administration for settlement to the court from which the letters testamentary or of administration were obtained, at the first term thereof, which shall happen after the expiration of six months after the date of the letters aforesaid, and, in like manner, every two months thereafter, or sooner if required, until the duties of their administration are fully completed. Every such account shall set forth the amount of money received by the executor or administrator to the date thereof, with the sources from which the several amounts thereof were received, and all sums of money paid out, with the proper vouchers for such payments.

Apportionment and distribution of assets of estate at each accounting; delay of apportionment by court.

2926. SEC. 139. Upon each and every settlement of the accounts of any executor or administrator, it shall be the duty of the court to ascertain the whole amount of moneys which shall have come into the hands of such executor or administrator, belonging to the estate of the deceased, and the whole amount of debts established against such estate, and if there be not sufficient to pay the whole of the debts, the moneys aforesaid, or such part thereof as the court may direct, shall be apportioned among the several creditors, *pro rata*, according to their several rights as established herein; and thereupon the court shall make an order directing such executor or administrator to pay out such moneys according to such apportionment, and the court, upon each and every settlement, shall proceed in like manner, until the whole debts be paid, or the assets exhausted; but no dividend shall, in such case, be ordered, which may probably exceed the *pro rata* amount due such several creditors, upon the allowance of all existing demands against the estate; and the court

may, in its discretion, refuse to direct any payment or distribution, until the expiration of one year from the issuing of letters.

Proceedings against executor, etc., for failure or refusal to pay over moneys or dividends; action on bond.

2927. SEC. 140. If any executor or administrator shall fail or refuse to pay over any moneys or dividend to any person entitled thereto, in pursuance of the order of the court, lawfully made, within thirty days after demand made for such moneys or dividend, the court upon application made, shall attach such delinquent executor or administrator, and may cause him to be imprisoned until he shall comply with the order aforesaid, or until such delinquent is discharged by due course of law; and, moreover, such failure or refusal on the part of such executor or administrator shall be deemed and taken in law to amount to a *devastavit;* and an action upon such executor's or administrator's bond, and against him and his securities, may be forthwith instituted, and the failure to pay such moneys or dividend, shall be sufficient breach to authorize a recovery thereon.

When payment of legacies shall be ordered.

2928. SEC. 141. Whenever it shall appear that there are sufficient assets to satisfy all legacies and all demands against the estate, the court shall order the payment of all legacies mentioned in the will of the testator, the specific legacies being first satisfied.

Distribution of surplus.

2929. SEC. 142. After the payment of all debts allowed against the estate of any decedent, and all legacies declared in his or her will, and the expenses of administration, the court shall direct the executor or administrator to distribute the surplus remaining in his hands, among the heirs and next of kin to the deceased, as provided by law, or by the last will of any testator.

Advancements made to any heir; how to be taken into consideration.

2930. SEC. 143. Where any heir of any intestate has received money, goods, chattels or real estate, if the amount so received shall be charged to such heir by said intestate, the same shall be taken into computation in making distribution of the estate, upon being brought into *hotchpot*, as aforesaid; *provided*, that an heir who has received from the intestate more than his share, shall in no case be required to refund.

Indemnifying bond from legatees or distributees

2931. SEC. 144. Executors and administrators shall not be compelled to pay legatees or distributees until bond and security be given by such legatees or distributees, to refund a due proportion of any debt which may afterwards appear against the estate, and the costs attending the recovery thereof; such bond shall be made payable to such executor or administrator, and shall be for his indemnity, and filed in the county court.

Apportionment in case of necessity that any portion of legacies or shares shall be refunded; action on indemnifying bond

2932. SEC. 145. When at any time after the payment of legacies or distributive shares, it shall become necessary that the same or any part thereof be refunded, for the payment of debts, it shall be the duty of the court on application made to apportion the same, among the several legatees or distributees, according to the amount received by them, except the specific legacies, which shall in no case be required to be refunded unless the residue be insufficient to satisfy the debts; and if any distributee or legatee shall refuse to refund according to the order of the court made as aforesaid, within sixty days thereafter, upon demand made, such refusal shall be deemed a breach of the bond given to the executor or administrator as aforesaid, and an action may be instituted thereon, to the use of party entitled, and in all cases where there may be no bond, an action of debt may be maintained against such distributee or legatee, and the order of the court of probate shall be evidence of the same.

Apportionment in case of increase or diminution of legacies by renunciation of widow

2933. SEC. 146. In all cases where a widow shall renounce all benefit under the will, and the legacies and bequests therein contained, to other persons, shall in consequence thereof, become increased or diminished in amount, quantity or value, it shall be the duty of the court, upon the settlement of such estate, to abate from or add to such legacies and bequests, in such manner as to equalize the loss sustained or advantage derived thereby, in a ratio corresponding to the several amounts of such legacies and bequests, according to the intrinsic value of each.

Publication of notice of final settlement.

2934. SEC. 147. If any executor or administrator desire to make final settlement of his administration, he shall give notice by publication for four weeks successively, in some daily or weekly newspaper printed in the county

wherein administration is had; or if there be no such newspaper, then by posting such notice in four of the most public places in such county, of the term and day of the court on which he will present his accounts for final settlement.

Proceedings in court upon final settlement; approval of accounts and discharge of executor, etc.

2935. SEC. 148. If it shall appear that such notice hath been duly published, the court may, upon the day named therein, hear and examine the accounts of the executor or administrator, which shall be rendered in the same manner as at other settlements, and the objections of any parties in interest who may object thereto, and if it shall appear that the executor or administrator hath fully and faithfully administered all the estate of the decedent, which hath come to his hands, according to the provisions of this chapter, the court may approve such accounts and discharge the executor or administrator, but no such discharge shall in any manner affect the right of any creditor, heir or devisee, to bring an action upon the bond of such executor or administrator, for any breach of the condition thereof.

Compensation of executor or administrator.

2936. SEC. 149. Executors and administrators shall be allowed, as a compensation for their trouble, a sum not exceeding six per cent. on the whole amount of personal estate, and not exceeding three per cent. on the money arising from the sales or letting of land, with such additional allowances for costs and charges in collecting and defending the claims of the estate, and disposing of the same as shall be reasonable, to be allowed and paid as other expenses of administration.

OF ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

Executor, etc., not chargeable beyond assets by reason of false pleading.

2937. SEC. 150. No executor or administrator, or security for any executor or administrator, shall be chargeable beyond the assets of a testator or intestate, by reason of any omission or mistake in pleading or false pleading of such executor or administrator.

Action on bond; proof of bond.

2938. SEC. 151. All bonds which may at any time be given by any executor or administrator, either with or without the will annexed, or *de bonis non*, to collect, or public administrator, may be put in suit and prosecuted against all

or any one or more of the obligors named therein, in the name of the people of the state of Colorado, for the use of any person or persons who may have been injured by reason of the neglect or improper conduct of any such executor or administrator as aforesaid, and such bond shall not become void on the recovery thereon, but may be sued upon, from time to time, until the whole penalty shall be recovered; *provided*, that the person or persons for whose use the same may at any time be prosecuted, shall be liable for all costs which may accrue in the prosecution of the same; and certified copies of all such bonds, under the seal of the county court, shall be received as evidence to authorize such recovery in any court of law or equity having jurisdiction thereof in this state.

Action against executor, etc., for failure to comply with provisions of this chapter, or with covenants of bond.

2939. SEC. 152. If any executor or administrator shall fail to comply with the provisions of this chapter, or shall fail to comply with any or all the covenants in his bond, an action may be forthwith instituted upon such bond, and the failure aforesaid shall be sufficient breach to authorize a recovery, in the same manner as though a *devastavit* had been previously established against such executor or administrator.

Action by one executor, etc., against co-executor, etc., for engrossing estate.

2940. SEC. 153. Where there are two or more executors or administrators of any estate, and any one of them takes all or a greater part of such estate and refuses to pay the debts of the testator or intestate, or refuses to account with the other executors or administrators, in such case the executor or administrator so aggrieved may have his action of account or suit in equity against such delinquent executor or administrator, and recover such proportionate share of said estate as shall belong to him; and every executor, being a residuary legatee, may have an action of account or suit in equity against his co-executor, and recover his part of the estate in his hands; and any other legatee may have the like remedy against the executors; *provided*, that before any action shall be commenced for legacies, as aforesaid, the court of probate shall make an order directing them to be paid.

2941. SEC. 154. All actions at law whatsoever, save and except actions on the case for slander or libel, or tres-

pass for injuries done to the person, and actions brought for the recovery of real estate, shall survive to and against executors and administrators.

What actions survive to and against executors and administrators.

GENERAL PROVISIONS.

2942. SEC. 155. All provisions in this chapter relative to an executor or administrator, shall apply and extend to an executrix or administratrix, or executors or administrators, and *vice versa*, unless otherwise expressly provided, and whenever any party in the singular number, or a male party, is mentioned, the words shall apply to a female, or two or more having a joint interest, so far as the rule can be with propriety applied, and so far as it is not otherwise directed. The words "will" or "last will," as used in this or any other chapter, shall be construed to include all testaments and codicils.

Certain words construed.

2943. SEC. 156. In all cases in which, by the division of any county in this state, the administrator or executor to whom letters may have been granted by the county court of such county, shall, by such division, be placed beyond the limits of the county in which such letters may have been granted, then, and in all such cases, the county court of such county shall be authorized to proceed and settle the estate upon which letters of administration may have been so granted, in the same manner as if no such division had occurred.

Administration of whole estate to be had in county out of which letters issued.

2944. SEC. 157. The administration of the whole of the estate of any decedent within this state, shall be had in the county out of the county court of which letters testamentary or of administration may issue in pursuance of this chapter.

Same.

2945. SEC. 158. Any affidavit required to be made by this chapter may be made and sworn to before any officer authorized by the law of this state to administer oaths, or by any officer of any state, territory or district of the United States having like authority by the law of the state, territory or district where he resides; the fact of such authority, and the official capacity of such officer, to be proved and established in the same manner as required in

Before whom affidavits required by this chapter may be made.

the case of deeds of lands made and acknowledged beyond this state.

Proceedings against executor, administrator, guardian, etc., for failure to render accounts; penalty therefor.

2946. SEC. 159. If any executor, administrator or collector fail to render his accounts of his administration, at the time and in the manner required by law, the county court shall have power to attach such executor or administrator for such default, and may proceed against him as for a contempt; in any such case, the court may impose a fine upon such executor or administrator, so in default, not exceeding three hundred dollars; and whenever any such fine is imposed, it shall be a part of the judgment of the court that such executor or administrator stand committed to the common jail of the county until he or she will comply with the order of the court. This section shall also apply to the guardians of infants and conservators of insane persons.

AN ACT TO AMEND CHAPTER NINETY OF THE REVISED STATUTES OF COLORADO.

[Session Laws, 1870.]

Proceedings in district court in case county judge interested as devisee, legatee, or otherwise.

2947. SECTION 1. Whenever the county judge of any county in this state shall be interested as heir, devisee, legatee or otherwise, in the settlement of the estate of any deceased person, the like proceedings shall be had in the district court of the proper county, as in the county court, respecting the settlement of such estate.

New bond to be given by executor, etc., upon surety on former bond becoming county judge.

2948. SEC. 2. Wherever any county judge of any county in this state shall have become surety on the bond of any executor, or administrator, or guardian previous to his coming into office, and such estate shall remain unsettled, or such minor shall not have come of full age at the time of such county judge coming into office, he should require such executor, or administrator, or guardian to give a new bond, and in default thereof, shall remove such executor, administrator or guardian, and appoint another in his or her place.

AN ACT CONCERNING THE ESTATE OF NON-RESIDENT INFANTS.

[Session Laws, 1876.]

2949. SECTION 1. In any case where by descent, devise or bequest any moneys, or the proceeds of sale of property of any kind, shall become the property of any infant or infants residing in this state, and such infant or infants shall afterwards remove from this state, and shall become residents of any other state or territory, it shall be lawful for any county court having charge or control of such moneys or funds of such infant or infants, to authorize the payment of the same to any duly qualified guardian of such infant or infants in the state or territory in which he or they may have become residents, upon due proof of the appointment and qualification of such guardian.

Payment of devise, legacy, etc., of non-resident infants to qualified guardians.

2950. SEC. 2. The county courts shall have the same power and authority in all cases where at the time of the descent, devise or bequest, as above stated, the infant or infants shall be residents of any other state or territory of the United States.

Power of county courts in such cases.

CHAPTER CIV.

WITNESSES.

AN ACT RELATING TO THE COMPETENCY OF WITNESSES IN CIVIL CASES.

[Session Laws, 1870.]

2951. SECTION 1. That no person shall be disqualified as a witness in any civil action, suit or proceeding, except as hereinafter stated, by reason of his or her interest in the event thereof, as a party or otherwise, or by reason of his or her conviction of any crime, but such interest or conviction may be shown for the purpose of affecting the credibility of such witness; and the fact of such conviction may be proved like any other fact not of record, either by the witness himself (who shall be compelled to testify thereto,)

Competency of parties in interest, or persons convicted of crime, as witnesses.

or by any other witness cognizant of such conviction, as impeaching testimony, or by any other competent testimony.

Cases in which parties in interest not allowed to testify in their own behalf.

2952. SEC. 2. That no party to any civil action, suit or proceeding, or person directly interested in the event thereof, shall be allowed to testify therein, of his own motion, or in his own behalf, by virtue of the foregoing section, when any adverse party sues or defends as the trustee or conservator of any idiot, lunatic or distracted person, or as the executor or administrator, heir, legatee or devisee of any deceased person, or as guardian or trustee of any such heir, legatee or devisee, unless when called as a witness by such adverse party so suing or defending; and also, except in the following cases, namely:

Exceptions.

First—In any such action, suit or proceeding a party or interested person may testify to facts occurring after the death of such deceased person.

Second—When in such action, suit or proceeding, any agent of any deceased person shall, in behalf of any person or persons, suing or being sued, in either of the capacities above named, testify to any conversation or transaction between such agent and the opposite party or parties in interest, such party or parties in interest may testify concerning the same conversation or transaction,

Third—When in any such action, suit or proceeding, any such party suing or defending as aforesaid, or any person having a direct interest in the event of such action, suit or proceeding, shall testify in behalf of such party so suing or defending, to any conversation or transaction with the opposite party or parties in interest, then such opposite party in interest shall also be permitted to testify as to the same conversation or transaction.

Fourth—When in any such action, suit or proceeding, any witness not a party to the record, or not a party in interest, or not an agent of such decased person, shall in behalf of any party to such action, suit or proceeding, testify to any conversation or admission by any adverse party or parties in interest, occuring before the death and in the absence of such deceased person, such adverse party

or parties in interest may also testify as to the same admission or conversation.

Fifth—When in any such action, suit or proceeding, the deposition of such deceased person shall be read in evidence at the trial, any adverse party or parties in interest may testify as to all matters and things testified to in such deposition by such deceased person, and not excluded for irrelevancy or incompetency.

Testimony of party in interest in regard to book accounts.

2953. SEC. 3. When in any civil action, suit or proceeding, the claim or defense is founded on a book account, any party or interested person may testify to his account book, and the items therein contained; that the same is a book of original entries, and that the entries therein, were made by himself, and are true and just, or that the same were made by a deceased person, or by a disinterested person, a non-resident of the state at the time of the trial, and were made by such deceased or non-resident person in the usual course of trade, and of his duty or employment to the party so testifying; and thereupon the said account book and entries shall be admitted as evidence in the case.

In actions by or against surviving partners or joint contractors, in what case party adversely interested may be competent witness.

2954. SEC. 4. That in any action, suit or proceeding, by or against any surviving partner or partners, joint contractor or contractors, no adverse party or person adversely interested in the event thereof, shall, by virtue of section one of this act, be rendered a competent witness to testify to any admission or conversation by any deceased partner or joint contractor, unless some one or more of the surviving partners or joint contractors were also present at the time of such admission or conversation.

Testimony of husband or wife against each other.

2955. SEC. 5. That no husband or wife shall, by virtue of section one of this act, be rendered competent to testify for or against each other, as to any transaction or conversation occurring during the marriage, whether called as a witness during the existence of the marriage or after its dissolution, except in cases when the wife would, if unmarried, be plaintiff or defendant, or where the cause of action grows out of a personal wrong or injury done by one to the other, or grows out of the neglect of the husband to furnish the wife with a suitable support; and except, also, in cases where the litigation shall be concerning the sepa-

rate property of the wife, in all of which cases the husband and wife may testify for or against each other in the same manner as other parties may under the provisions of this act.

Testimony of adverse party in civil action.

2956. SEC. 6. That any party to any civil action, suit or proceeding may compel any adverse party or person for whose benefit such action, suit or proceeding is brought, instituted, prosecuted or defended, to testify as a witness at the trial, or by deposition, taken as other depositions are by law required, in the same manner and subject to the same rules as other witnesses.

Transfer of claim will not render party competent to testify.

2957. SEC. 7. That in any civil action, suit or proceeding, no person who would, if a party thereto, be incompetent to testify therein under the provisions of section two or section three, shall become competent by reason of any assignment or release of his claim, made for the purpose of allowing such person to testify.

What laws not affected by this act.

2958. SEC. 8. That nothing in this act contained shall in any manner affect the laws now existing relating to the settlement of estates of deceased persons, infants, idiots, lunatics, distracted persons, or to the acknowledgment or proof of deeds and other conveyances relating to real estate, in order to entitle the same to be recorded; or as to the attestation of the execution of the last wills and testaments, or of any other instrument required by law to be attested.

CHAPTER CV.

WOLVES AND CAYOTES.

AN ACT FOR THE DESTRUCTION OF WOLVES AND CAYOTES.

[Session Laws, 1876.]

Premium for killing wolf or cayote.

2959. SECTION 1. That any person who shall kill any wolf or cayote or any number of wolves or cayotes within this state, shall receive a premium of fifty cents for each wolf or cayote so killed, to be paid out of the state treasury as hereinafter provided.

2960. SEC. 2. Any person claiming such premium may produce the scalp, including the ears entire, to the county clerk of the county in which such wolf or cayote shall be killed, within two months after such killing, and take and subscribe the following oath or affirmation before such clerk:

Affidavit to be made to county clerk upon delivery of scalp.

"I do solemnly swear (or affirm) that the scalp (or scalps) here produced by me this day are of a wolf (or cayote, or wolves or cayotes, as the case may be, giving the number,) within the county of ————, and that the same was (or were) killed by me within two months last past."

To which oath the clerk shall append the usual jurat, subscribed by himself, as such officer.

2961. SEC. 3. Such clerk shall forthwith destroy such scalp or scalps by burning the same, and give the person proving up the same, as aforesaid, under the hand of such clerk and the county seal, a certificate setting forth in words the number of scalps and the name and residence of such person, and that he has proved the killing as required by statute, and is entitled to the sum of ———— dollars as premium therefor.

Certificate of county clerk.

2962. SEC. 4. Such certificates shall be received, and the amount so certified paid to the holder on presentation, by the collector of the revenue of the county in which the same was given, and such collector shall be allowed pay out of the state treasury for the same.

Payment of certificate by county treasurer

2963. SEC. 5. Such clerk shall keep a register of the number of all such scalps in a book which he shall keep for that purpose, in which he shall enter every certificate granted, the date when, and the persons by whom proven, and shall transmit a certified copy of such register, quarterly, on the first of January, April, July and October, of each year, under the seal of the county, to the treasurer of the state; and the said clerk shall file the aforesaid oaths and keep them free for inspection.

Register of scalps; what shall be entered therein.

2964. SEC. 6. Such clerk shall receive for his services from the treasury of his county at the same rate as allowed by law for similar services, to be audited by the board of county commissioners.

Compensation of county clerk.

ACTS

OF THE

FIRST GENERAL ASSEMBLY OF THE STATE OF COLORADO,

1876-7,

REPEALING FORMER LAWS ONLY.

AN ACT TO REPEAL SECTION TWO (2) OF AN ACT ENTITLED AN ACT CONCERNING COSTS IN CERTAIN CASES, APPROVED FEBRUARY 11, 1876.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. That section two (2) of an act entitled an act concerning costs in certain cases, approved February 11, A. D. 1876, be and the same is hereby repealed.

SEC. 2. Nothing in this repeal shall apply to cases pending in court at the time this act takes effect.

Approved, January 31, 1877.

AN ACT TO REPEAL AN ACT ENTITLED "AN ACT CONCERNING COSTS IN CRIMINAL CASES," APPROVED FEBRUARY 7, 1876.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. That an act entitled "an act concerning costs in criminal cases," approved February 7, 1876, be, and the same is hereby repealed.

SEC. 2. Inasmuch as the act hereby repealed, in many cases works great hardships to innocent parties, and justice is impeded in certain cases, it is considered that an emergency exists, requiring that this act take effect immediately; therefore, this act shall take effect immediately upon its passage.

Approved, February 8, 1877.

AN ACT TO REPEAL "AN ACT TO AMEND CHAPTER NUMBER FIFTY-FIVE OF THE REVISED STATUTES OF COLORADO, ENTITLED LIMITATIONS," APPROVED FEBRUARY 4, 1876, AND RELATING TO NEW PROMISES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. That the act to amend chapter number fifty-five of the revised statutes of Colorado territory, entitled "limitations," approved February 4, 1876, be and the same is hereby repealed.

Approved, February 28, 1877.

AN ACT TO REPEAL CERTAIN LAWS RELATING TO CORPORATIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. That chapter eighteen (18) of the revised statutes of the territory of Colorado, entitled "corporation;"

That an act entitled "an act additional to chapter eighteen of the revised statutes, entitled corporations," approved February 11, A. D. 1870;

That an act entitled "an act amendatory of chapter eighteen of the revised statutes of Colorado concerning corporations," approved February 11, 1870;

That an act entitled "an act to make section forty-eight (48) of chapter eighteen (18) revised statutes of Colorado, applicable to certain corporations or bodies politic," approved January 22, 1872;

That an act entitled "an act to amend section twenty-eight (28) of chapter eighteen (18) of the revised statutes of Colorado," approved February 6, 1872;

That an act entitled "an act to enable counties to provide for the payment of their bonded debts," approved February 13, 1874;

That an act entitled "an act to amend chapter eighteen (18) of the revised statutes of Colorado territory, entitled corporations," approved February 11, 1876;

That an act entitled "an act to amend section fifteen (15) of chapter eighteen (18) of the revised statutes, concerning corporations," approved February 11, 1876;

That an act entitled "an act to amend chapter eighteen (18) of the revised statutes of Colorado territory," approved February 7, 1876;

That an act entitled "an act to amend chapter eighteen (18) of the revised statutes of Colorado territory," approved February 11, 1876;

That an act entitled "an act to amend chapter eighteen (18) of the revised statutes of Colorado territory, entitled corporations," approved February 11, 1876;

That an act entitled "an act to amend section one (1) of article two (2) of chapter eighteen (18) of the revised statutes of Colorado, relating to corporations," approved January 26, 1872, be, and the same are hereby repealed.

SEC. 2. Said repeal shall not impair or affect any act done or any right accruing, accrued or acquired under the laws existing and herein repealed; *and provided*, that the laws and parts of laws hereby repealed, shall be and remain in force for the purpose of completing any suit or proceedings now pending, or which may be commenced thereunder before this act takes effect.

Approved, March 15, 1877.

AN ACT TO REPEAL AN ACT CONCERNING PRACTICE IN THE DISTRICT AND PROBATE COURTS, APPROVED, FEBRUARY 4, 1876.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. That an act entitled an act concerning practice in the district and probate courts, approved, February 4, 1876, be and the same is hereby repealed.

SEC. 2. Inasmuch as inconvenience and expense is caused by the law which this act repeals, it is the sense of this general assembly that this act shall take effect and be in force from and after its passage.

Approved, January 20, 1877.

AN ACT TO REPEAL ALL ACTS IN REFRENCE TO THE ESTABLISHMENT OF ASSAY OFFICES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. That an act to establish assay offices in Colorado territory, approved, February 8, 1872; also, an act to amend an act entitled "an act to establish assay offices in Colorado territory," approved, February 10, 1874; also, an act to amend an act entitled "an act to amend an act entitled an act to establish assay offices in Colorado territory," approved, February 11, 1876, be and the same are hereby repealed.

SEC. 2. The auditor of state is hereby authorized and instructed to draw his warrant on the state treasury, in favor of the proper parties, for salaries as now provided by law, to March 15, 1877; the same to be paid out of the existing appropriation for such purpose.

Approved, March 17, 1877.

UNPUBLISHED ACTS

—OF THE—

FIRST GENERAL ASSEMBLY OF STATE OF COLORADO,

1876-7.

H. B. 1. An act to provide for the appointment by this general assembly of electors in the electoral college. Approved, November 7, 1876.

S. B. 3. An act to provide for canvassing the votes cast at the last general election for regents of the university. Approved, December 7, 1876.

H. B. 19. An act providing for the sale of unclaimed lots and parcels of land in the city of Black Hawk, and to repeal section two of an act for the relief of the city of Black Hawk, approved February 9, 1876. Approved, December 14, 1876.

H. B. 43. An act to provide for an appropriation for the expenses of the general assembly of the state of Colorado, including the per diem and mileage of members and the pay of the officers and employes thereof. Approved, December 14, 1876.

H. B. 33. An act for the relief of Robert Y. Force, of Arapahoe county. Approved, January 16, 1877.

H. B. 201. An act to pay for the printing for the general assembly and the session and all other laws. Approved, January 18, 1877.

S. B. 6. An act to provide for the payment of certain claims for printing the Constitution of the State. Approved, January 18, 1877.

H. B. 215. An act to provide for the purchase of law books for the library of the supreme court. Approved, January 22, 1877.

H. B. 199. An act to pay Herman Beckurts for printing one thousand copies of election laws. Approved, February 3, 1877.

H. B. 236. An act to amend the charter of Georgetown. Approved, February 6, 1877.

H. B. 265. An act for the relief of the widow of C. Dominguez. Approved, February 6, 1877.

S. B. 119. An act to provide for the payment of the balance due A. R. Dyer and C. Dominguez, for translating the constitution of Colorado into the Spanish language. Approved, February 10, 1877.

H. B. 206. An act to appropriate moneys to pay expenses and claims incurred under the law concerning fugitives from justice. Approved, February 14, 1877.

S. B. 19. An act to provide for the payment of the claim of William Whist, for translating the constitution of the state into the German language. Approved, February 16, 1877.

H. B. 182. An act to repeal section one of an act amending an act entitled "an act to incorporate the city of Black Hawk," approved February 10, 1865, relating to the appointment of a board of school directors for said city, and to enact other provisions in lieu thereof. Approved, February 19, 1877.

H. B. 204. An act to provide for paying the expenses of inspecting, entering and locating the public lands. Approved, February 24, 1877.

H. B. 176. An act to repeal an act entitled "an act providing for the fencing of lands where grass is cut and put in stacks in Las Animas county," approved February 10, 1876. Approved, February 27, 1877.

S. B. 135. An act for the relief of Las Animas county.

[This act was received at the executive office February 21, 1877, and failing to receive the signature of the governor within the time specified, or to be returned to the senate, became a law by virtue of section eleven, article four, of the constitution.]

S. B. 129. An act appropriating money for the maintenance of the state board of health. Approved, March 7, 1877.

H. B. 207. An act to legalize the proceedings of the county commissioners and assessors of the counties of San Juan and La Plata, in the assesment and collection of taxes therein, for the years 1874, 1875 and 1876. Approved, March 9, 1877.

H. B. 32. An act to repeal section two of an act to provide for the further execution of the trust relating to the town site of the town of Idaho Springs, and to regulate the same and provide for a substitute therefor. Approved, March 9, 1877.

H. B. 198. An act to pay the rent of the state library rooms. Approved, March 9, 1877.

H. B. 205. An act for the purpose of paying the expenses of the state penitentiary for the years 1877 and 1878. Approved, March 9, 1877.

H. B. 245. An act to provide for the expense of completing and perfecting the records in the office of the secretary of state. Approved, March 10, 1877.

H. B. 238. An act providing for the sale of lots and parcels of land in the city of Central, and to repeal sections two and three of "act for the relief of the inhabitants of the city of Central," approved, February 1, 1876. Approved, March 14, 1877.

H. B. 269. An act to provide for paying the justices of the supreme court since the adoption of the constitution. Approved, March 14, 1877.

H. B. 71. An act making an appropriation for insane paupers. Approved March 14, 1877.

S. B. 11. An act dividing the senators elected to the first general assembly into two classes, and to fix the time the senators of each class shall hold respectively. Approved, March 17, 1877.

H. B. 276. An act for the relief of E. W. Brewster. Approved, March 17, 1877.

H. B. 243. An act to so amend an act entitled "an act authorizing the commissioners of Douglas county to provide a fund for the erection of public buildings," approved, February 13, 1874, as to authorize a sale of lots and blocks in the county seat of said county, at private sale. Approved, March 17, 1877.

H. B. 197. An act to provide for the ordinary expenses of the executive, legislative and judicial departments of the state, and interest on the public debt. Approved, March 20, 1877.

S. B. 47. An act to provide for the printing of the constitution of the United States, the declaration of independence, the enabling act and constitution of the state, together with all the general laws of the state, in the most convenient and compact form, together with an index to the same. Approved, March 22, 1877

STATUTES.

[Revised Statutes, Chapter LXXIX.]

SECTION 1. In the construction of all statutes, the following rules shall be observed, unless such construction shall be manifestly inconsistent with the intent of the legislature, or repugnant to the context of the same statute, that is to say:

First—All words and phrases shall be understood and construed according to the approved and common usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning, shall be construed and understood according to such peculiar and appropriate meaning.

Second—Every word importing the singular number only, may extend to and be applied to one person or thing, or to several persons or things; and every word importing the masculine gender only, may extend to and be applied to females as well as males.

Third—The words "insane person" shall be construed to include every idiot, *non compos*, lunatic or distracted person.

Fourth—The word "issue," as applied to the descent of estate, shall be construed to include all the lawful, lineal descendants of the ancestor.

Fifth—The words "land," or "lands," and the words "real estate," shall be construed to include lands, tenements and hereditaments, and all rights thereto, and all interests therein.

Sixth—The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year, unless otherwise expressed.

Seventh—The word "oath" shall be deemed to include an affirmation; and the word "sworn" to include the word "affirmed."

Eighth—The word "person" may extend and be applied to bodies politic and corporate.

Ninth—The word "town" or "towns" may be construed to include city or cities.

Tenth—The word "will" shall be construed to mean codicil, as well as will.

Eleventh—The words "written," or "in writing," may be construed to include printing and engraving; *provided*, that in all cases when the written signature of any person is required by law, it shall always mean the proper handwriting of such person, or in case he is unable to write, his proper mark.

Twelfth—The word "state," when applied to different parts of the United States, may be construed to include the District of Columbia, and the several territories; and the words "United States" may be construed to include the said district and territories.

Thirteenth—The term "court" shall, in all necessary cases, be deemed to refer as well to county judges and justices of the peace, as to courts of record.

SEC. 2. No act, or part of an act, repealed by another act, shall be deemed to be revived by the repeal of the repealing act.

SEC. 3. All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the general assembly may be fully carried out.

SEC. 4. Every act which does not expressly prescribe the time when it shall go into operation, shall take effect from and after its passage.

SEC. 5. In the publishing the acts of the general assembly, the enacting clause, the signature of the speaker of the house of representatives, the president of the senate, and the governor, shall be omitted, but the date of their approval shall be retained.

SEC. 6. All acts of the general assembly of the state of Colorado shall be designated, known and acknowledged in each such act of said state as follows: "*Be it enacted by the general assembly of the state of Colorado.*"

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